



REQUEST FOR PROPOSALS (RFP)

SOLICITATION NO. DHMH OPASS – 15-14125

Issue Date: 08/22/2014

Maryland Board of Physicians Rehabilitation Program

NOTICE TO BIDDERS/CONTRACTORS SMALL BUSINESS RESERVE PROCUREMENT

This is a Small Business Reserve Procurement for which award will be limited to certified small business vendors. Only businesses that meet the statutory requirements set forth in State Finance and Procurement Article, §§14-501 —14-505, Annotated Code of Maryland, and that are certified by the Department of General Services Small Business Reserve Program are eligible for award of a contract.

NOTICE

A Prospective Contractor that has received this document from the Department of Health and Mental Hygiene's website or <https://emaryland.buyspeed.com/bsol/>, or that has received this document from a source other than the Procurement Officer, and that wishes to assure receipt of any changes or additional materials related to this RFP, should immediately contact the Procurement Officer and provide the Prospective Contractor's name and mailing address so that addenda to the RFP or other communications can be sent to the Prospective Contractor.

Minority Business Enterprises Are Encouraged to Respond to this Solicitation

**STATE OF MARYLAND
NOTICE TO VENDORS**

In order to help us improve the quality of State solicitations, and to make our procurement process more responsive and business friendly, we ask that you take a few minutes and provide comments and suggestions regarding this solicitation. Please return your comments with your response. If you have chosen not to respond to this Contract, please email or fax this completed form to the attention of the Procurement Officer (see Key Information Sheet below for contact information).

Title: Maryland Board of Physicians Rehabilitation Program
Solicitation No: DHMH OPASS – 15-14125

1. If you have chosen not to respond to this solicitation, please indicate the reason(s) below:

- Other commitments preclude our participation at this time.
- The subject of the solicitation is not something we ordinarily provide.
- We are inexperienced in the work/commodities required.
- Specifications are unclear, too restrictive, etc. (Explain in REMARKS section.)
- The scope of work is beyond our present capacity.
- Doing business with the State of Maryland is simply too complicated. (Explain in REMARKS section.)
- We cannot be competitive. (Explain in REMARKS section.)
- Time allotted for completion of the Bid/Proposal is insufficient.
- Start-up time is insufficient.
- Bonding/Insurance requirements are restrictive. (Explain in REMARKS section.)
- Bid/Proposal requirements (other than specifications) are unreasonable or too risky. (Explain in REMARKS section.)
- MBE or VSBE requirements. (Explain in REMARKS section.)
- Prior State of Maryland contract experience was unprofitable or otherwise unsatisfactory. (Explain in REMARKS section.)
- Payment schedule too slow.
- Other: _____

2. If you have submitted a response to this solicitation, but wish to offer suggestions or express concerns, please use the REMARKS section below. (Attach additional pages as needed.)

REMARKS:

Vendor Name: _____ Date: _____

Contact Person: _____ Phone (____) _____ - _____

Address: _____

E-mail Address: _____

**STATE OF MARYLAND
DEPARTMENT OF HEALTH AND MENTAL HYGIENE
RFP KEY INFORMATION SUMMARY SHEET**

Request for Proposals: Maryland Board of Physicians Rehabilitation Program

Solicitation Number: DHMH OPASS – 15-14125

RFP Issue Date: 08/22/2014

RFP Issuing Office: Maryland Department of Health and Mental Hygiene
Maryland Board of Physicians

Procurement Officer: Michael Howard, CPPB
Assistant Director of Procurement
Office of Procurement and Support Services
201 West Preston Street, Room 416B
Baltimore, Maryland 21201
Phone: 410-767-5816 Fax: 310-333-5958
e-mail: Michael.Howard@maryland.gov

Contract Officer: John Gullucci, CPPB
John.Gullucci@maryland.gov

Contract Monitor: Gage Blair
Maryland Board of Physicians
4201 Patterson Ave., 4th Floor
Baltimore, Md. 21215
Phone: 410-764-2473 Fax: 410-358-2252
e-mail: gage.blair@maryland.gov

Proposals are to be sent to: Maryland Department of Health and Mental Hygiene
Office of Procurement and Support Services
201 West Preston Street, Room 416B
Baltimore, Maryland 21201
Attn: Michael Howard

Pre-Proposal Conference: September 9th 2014 at 2:00 PM Local Time
Maryland Board of Physicians
4201 Patterson Avenue Room 100
Baltimore, Md. 21215

Closing Date and Time: September 26th 2014 at 2:00 PM Local Time

MBE Subcontracting Goal: 0 %

VSBE Subcontracting Goal: 0 %

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SECTION 1 - GENERAL INFORMATION

1.1 Summary Statement

- 1.1.1 The Maryland Department of Health and Mental Hygiene (DHMH or the Department), Maryland Board of Physicians is issuing this Request for Proposals (RFP) to establish and maintain a Rehabilitation Program open to only those physicians and allied health professionals who are directed by the Board and/or referred in writing to receive rehabilitation services.
- 1.1.2 It is the State's intention to obtain services, as specified in this RFP, from a Contract between the selected Contractor and the State. The anticipated duration of services to be provided under this Contract is five (5) years. See Section 1.4 for more information.
- 1.1.3 The Department intends to make a single award as a result of this RFP.
- 1.1.4 Contractors, either directly or through their subcontractor(s), must be able to provide all services and meet all of the requirements requested in this solicitation and the successful Contractor (the Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work.

1.2 Abbreviations and Definitions

For purposes of this RFP, the following abbreviations or terms have the meanings indicated below:

- a. **Allied Health Professional** – an individual who practices an allied health care profession and is certified or licensed by the Maryland Board of Physicians, or who is an applicant for licensure or certification to practice an allied health profession in Maryland.
- b. **Board** – The Maryland Board of Physicians and staff.
- c. **Board Order** – a formal, public, written decision by the Board.
- d. **Business Day(s)** – The official Working Days of the week to include Monday through Friday. Official Working Days exclude State Holidays (see definition of “Normal State Business Hours” below).
- e. **Clinical Manager** – An individual(s) licensed as a Licensed Clinical Social Worker designated by the Rehabilitation Program to inform, evaluate, refer a participant for appropriate treatment and meet with the participant face to face on a monthly basis. The Clinical Manager may oversee more than one participant
- f. **Chemical Screen** – A laboratory test to detect drugs including controlled drugs or alcohol in the blood, urine, saliva, semen, sweat, hair, skin or nails from a human body.
- g. **COMAR** – Code of Maryland Regulations available on-line at www.dsd.state.md.us.
- h. **Contract** – The Contract awarded to the successful Contractor pursuant to this RFP. The Contract will be in the form of **Attachment A**.

- i. **Contract Commencement** - The date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required. See Section 1.4.
- j. **Contract Monitor (CM)** – The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope.
- k. **Contract Officer (CO)** – The Office of Procurement and Support Services (OPASS) designated individual assigned to facilitate the procurement process. The Procurement Officer may designate the Contract Officer to conduct components of the procurement on behalf of the Procurement Officer.
- l. **Contractor** – The selected Contractor that is awarded a Contract by the State.
- m. **Department or DHMH** – Maryland Department of Health and Mental Hygiene.
- n. **Disposition Agreement** - A formal written nonpublic agreement entered into between the Board and a physician, or allied health professional, by which the physician, or allied health professional agrees to comply with certain conditions and the Board foregoes further investigation into a matter based on compliance with those conditions.
- o. **eMM** – eMaryland Marketplace (see RFP Section 1.8).
- p. **Go-Live Date** – The date when the Contractor must begin providing all services required by this solicitation. See Section 1.4.
- q. **Local Time** – Time in the Eastern Time Zone as observed by the State of Maryland. Unless otherwise specified, all stated times shall be Local Time, even if not expressly designated as such.
- r. **Medical Director** – A contractor-employed Physician Medical director who has a full, unrestricted physician’s license in Maryland, be ABMS or AOA certified and have substantial experience in treating persons with alcohol or chemical addictions. This position provides oversight to the Rehabilitation Program.
- s. **Medical Review Officer (MRO)** – An employee or subcontractor of The Contractor, whose function is to review, interpret, and recommend action on the results of workplace drug testing, is critical. The MRO is a licensed medical doctor or doctor of osteopathy. The MRO has a recognized medical degree, including M.D., D.O., or M.B. The MRO has a license to practice medicine which is current, unrestricted, and in good standing, certification in addiction medicine or occupational medicine by a member board of the American Board of Medical Specialties or successful completion of an MRO certification examination given by a national medical specialty society recognized by the American Medical Association (AMA) or the American Osteopathic Association (AOA).

- t. **Minority Business Enterprise (MBE)** – Any legal entity certified as defined at COMAR 21.01.02.01B(54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
- u. **Noncompliance** - “Noncompliance” means any time a participant fails to perform or satisfy in whole or part any rule or requirement established by the Rehabilitation Program or any term or condition set forth in the Rehabilitation Agreement with the Rehabilitation Program or Board Order or Disposition Agreement issued by the Board, including but not limited to:
- (a) One missed appointment for a scheduled chemical screen, regardless of the reason or excuse given;
 - (b) One positive chemical screen and/or failure to submit to a chemical screen when notified;
 - (c) One failure or refusal to go for recommended/required treatment, attend a scheduled meeting with the case manager or other staff of the Rehabilitation Program, keep a scheduled appointment with a psychiatrist, psychotherapist, or other health care provider or employer;
 - (d) One failure or refusal to attend a required group therapy session or any other required meeting of outside organizations, such as Alcoholics Anonymous, Narcotics Anonymous, regardless of the reason or excuse given by the participant.
 - (e) Failure or refusal to provide any information or sign the appropriate releases for the Rehabilitation Program to receive records or information from third parties about the participant’s inpatient or outpatient treatment, or attendance at any scheduled appointment or meeting with a psychiatrist, psychotherapist, or any other health care provider, and fellowship meetings such as Alcoholics Anonymous or Narcotics Anonymous.
 - (f) A report from any hospital, facility, or employer indicating that the participant is a danger to self or others or that action has been taken against the participant’s privileges to practice medicine or practice an applied health profession.
 - (g) The participant’s being the subject of any disciplinary actions or investigations related to chemical dependence, quality of medical care rendered, or ability to practice medicine or an applied health profession competently by a hospital or health care facility where the participant has privileges or provides medical care or practices an applied health profession ; or
 - (h) Quitting the Program before the Rehabilitation Agreement has been completed.
 - (i) Failure to cooperate with the Rehabilitation Program, to include, meeting with Program staff, undergo an evaluation as directed by the Rehabilitation Program, and entering into an Rehabilitation Agreement and Plan as recommended by the Rehabilitation Program after a referral by the Board.
- v. **Normal State Business Hours** - Normal State business hours are 8:00 a.m. – 5:00 p.m. Monday through Friday except State Holidays, which can be found at: www.dbm.maryland.gov keyword: State Holidays.
- w. **Notice to Proceed (NTP)** – A written notice from the Procurement Officer that, subject to the conditions of the Contract, work under the Contract is to begin as of a specified date. The start date

listed in the NTP is the Go Live Date, and is the official start date of the Contract for the actual delivery of services as described in this solicitation. After Contract Commencement, additional NTPs may be issued by either the Procurement Officer or the Department Contract Manager regarding the start date for any service included within this solicitation with a delayed or non-specified implementation date.

- x. **Contractor** – An entity that submits a Proposal in response to this RFP.
- y. **Participant** – A physician or allied health professional directed by the Board to receive rehabilitation services in the Rehabilitation Program. This includes a physician or allied health professional that is under a Board Order or Disposition Agreement, and has signed a Rehabilitation Agreement with the Rehabilitation Program.
- z. **Physician** – An individual who is licensed to practice in the State of Maryland; or meets the qualifications to practice medicine but is currently not licensed to practice medicine in this State because of failure to renew, inactive status, or Board disciplinary action; or is an unlicensed medical practitioner (resident) who is practicing medicine in a post graduate training program in this State or is a medical school student practicing in a clinical clerkship in this state or is an applicant for a license to practice medicine in Maryland.
- aa. **Practitioner** – An individual who meets the definition of physician or allied health professional.
- bb. **Procurement Coordinator** – The State representative designated by the Procurement Officer to perform certain duties related to this solicitation which is expressly set forth herein.
- cc. **Procurement Officer** – The State representative for the resulting Contract. The Procurement Officer is responsible for the Contract and is the only State representative who can authorize changes to the Contract. DHMH may change the Procurement Officer at any time by written notice to the Contractor.
- dd. **Proposal** – As appropriate, either or both of an Contractor’s Technical or Financial Proposal.
- ee. **Rehabilitation** – Is a service offered by the Rehabilitation Program to physicians or allied health professionals whose ability to practice with reasonable skill and safety is impaired by alcoholism, chemical dependency, or other physical, emotional, or mental conditions.
- ff. **Rehabilitation Agreement** – A formal written nonpublic agreement between the contractor and a participant which commits the participant to comply with the requirements of the Rehabilitation Program.
- gg. **Rehabilitation Committee** – The Committee composed of representatives of the contractor and of the Board that provides oversight and advice to the contractor.
- hh. **Rehabilitation Program** – The totality of services offered by the Contractor to impaired practitioners directed by the Board to receive services which may include but is not limited to: (a) the receipt of referrals of practitioners in need of rehabilitation services (b) assessment, investigation, and evaluation (c) referral to appropriate inpatient and outpatient treatment sources (d) development of an individual Rehabilitation Plan (e) monitoring of treatment, including chemical screening of urine, breath, or blood; attendance at schedule medical/therapy appointments, worksite monitor reports, attendance at self-help programs, etc.

- ii. **Rehabilitation Plan** – A formal written plan for each participant, updated regularly, which sets forth specific requirements that the participant must meet, including, physical or mental evaluation, inpatient or outpatient treatment, attendance at Alcoholics Anonymous, Narcotics Anonymous, or similar group meetings, chemical screens, regular medication, and schedule for meetings with the participant’s case manager.
- jj. **Request for Proposals (RFP)** – This Request for Proposals issued by the Maryland Department of Health and Mental Hygiene, Maryland Board of Physicians, Solicitation Number OPASS-15-14125 dated 08/22/2014, including any addenda.
- kk. **State** – The State of Maryland.
- ll. **Total Proposal Price** - The Contractor’s total proposed price for services in response to this solicitation, included in the Financial Proposal with Attachment F – Price Form, and used in the financial evaluation of Proposals (see RFP Section 5.3).
- mm. **Veteran-owned Small Business Enterprise (VSBE)** – a business that is verified by the Center for Veterans Enterprise of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.
- nn. **Working Day(s)** – Same as “Business Day(s).”
- oo. **Worksite** – means any location where a participant practices medicine or an allied health profession on a regular basis, or is otherwise employed, including but not limited to a private office, hospital, emergency room, nursing home, etc.
- pp. **Worksite Monitor** – An individual who interacts with a participant in a specific worksite and agrees to submit regular reports on the participant to the case manager at the Rehabilitation Program.

1.3 Contract Type

The Contract resulting from this solicitation shall be a Firm Fixed Price Contract as described in COMAR 21.06.03.02 for the price for all services for up to 100 participants each Contract year.

1.4 Contract Duration

- 1.4.1 The Contract that results from this solicitation shall commence as of the date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required (“Contract Commencement”).
- 1.4.2 The period of time from the date of Contract Commencement through the Go-Live Date (see Section 1.2 definition and Section 1.4.3) will be the Contract “Start-up Period.” During the Start-up Period the Contractor shall perform start-up activities such as are necessary to enable the Contractor to begin the successful performance of Contract activities as of the Go Live Date. No compensation will be paid to the Contractor for any activities it performs during the Start-up Period.

- 1.4.3 As of the Go-Live Date contained in a Notice to Proceed (see Section 1.2 definition), the Contractor shall perform all activities required by the Contract, including the requirements of this solicitation, and the offerings in its Technical Proposal, for the compensation described in its Financial Proposal.
- 1.4.4 The duration of the Contract will be for the period of time from Contract Commencement to the Go-Live Date plus five years from the Go-Live Date for the provision of all services required by the Contract and the requirements of this solicitation. The anticipated Go-Live date is January 1, 2015.
- 1.4.5 The Contractor's obligations to pay invoices to subcontractors that provided services during the Contract term, as well as the audit, confidentiality, document retention, and indemnification obligations of the Contract (see Attachment A) shall survive expiration or termination of the Contract and continue in effect until all such obligations are satisfied.

1.5 Procurement Officer

- 1.5.1 The sole point of contact in the State for purposes of this solicitation prior to the award of any Contract is the Procurement Officer at the address listed below:

Michael Howard, CPPB
Procurement Officer
Maryland Department of Health and Mental Hygiene
Office of Procurement and Support Services
201 West Preston Street, Room 416B
Baltimore, Maryland 21201
Phone Number: (410) 767-0974
Fax Number: (410) 333-5958
E-mail: michael.howard@maryland.gov

The Department may change the Procurement Officer at any time by written notice.

- 1.5.2 The Procurement Officer designates the following individual as the Contract Officer, who is authorized to act on behalf of the Procurement Officer:

The Department may change the Procurement Officer at any time by written notice.

- 1.5.2 The Procurement Officer designates the following individual as the Procurement Coordinator, who is authorized to act on behalf of the Procurement Officer only as expressly set forth in this solicitation:

Regina Rouchard
Procurement Coordinator
4201 Patterson Ave., 4th Floor
Baltimore, Maryland 21215
Phone Number: (410) 764-4706
Fax Number: (410) 358-1298
E-mail: regina.rouchard@maryland.gov

The Department may change the Procurement Coordinator at any time by written notice.

1.5.3 The Procurement Officer designates the following individual as the Contract Officer, who is authorized to act on behalf of the Procurement Officer:

John Gullucci, CPPB
Contract Officer
Maryland Department of Health and Mental Hygiene
Office of Procurement and Support Services
201 West Preston Street
Baltimore, MD 21201
Phone Number: (410) 767- 5823
Fax Number: (410) 333-5958
E-mail: John.Gullucci@maryland.gov

The Department may change the Contract Officer at any time by written notice.

1.6 Contract Monitor

The Contract Monitor is:

Gage Blair
Maryland Department of Health and Mental Hygiene
Maryland Board of Physicians
4201 Patterson Avenue, 4th. Floor
Baltimore, Maryland 21212
Phone Number: (410) 764 - 2473
Fax Number: (410) 358 - 2252
E-mail: Gage.Blair@maryland.gov

The Department may change the Contract Monitor at any time by written notice.

1.7 Pre-Proposal Conference

A Pre-Proposal Conference (the Conference) will be held on **09/09/2014** beginning at **2:00 PM** Local Time, at 4201 Patterson Ave. RM 100, Baltimore, MD. 21215. All prospective Contractors are encouraged to attend in order to facilitate better preparation of their Proposals.

The Conference will be summarized. As promptly as is feasible subsequent to the Conference, a summary of the Conference and all questions and answers known at that time will be distributed to all prospective Contractors known to have received a copy of this RFP. This summary, as well as the questions and answers, will also be posted on eMaryland Marketplace. See RFP Section 1.8.

In order to assure adequate seating and other accommodations at the Conference, please e-mail, mail, or fax to 410-358-1298 the Pre-Proposal Conference Response Form to the attention of the “Procurement Coordinator” no later than **4:00 p.m.** Local Time on **09/04/2014**. The Pre-Proposal Conference Response Form is included as **Attachment E** to this RFP. In addition, if there is a need for sign language interpretation and/or other special accommodations due to a disability, please notify the “Procurement Coordinator” no later than **09/04/2014**. The Department will make a reasonable effort to provide such special accommodation.

1.8 eMarylandMarketplace

Each Contractor is requested to indicate its eMaryland Marketplace (eMM) vendor number in the Transmittal Letter (cover letter) submitted at the time of its Proposal submission to this RFP.

eMM is an electronic commerce system administered by the Maryland Department of General Services. In addition to using the DHMH website (<http://www.dhmh.maryland.gov/procumnt/SitePages/procopps.aspx>) and possibly other means for transmitting the RFP and associated materials, the solicitation and summary of the Pre-Proposal Conference, Contractor questions and the Procurement Officer's responses, addenda, and other solicitation-related information will be provided via eMM.

In order to receive a contract award, a vendor must be registered on eMM. Registration is free. Go to <https://emaryland.buyspeed.com/bsol/login.jsp>, click on "Register" to begin the process, and then follow the prompts.

1.9 Questions

Written questions from prospective Contractors will be accepted by the Procurement Officer prior to the Conference. If possible and appropriate, such questions will be answered at the Conference. (No substantive question will be answered prior to the Conference.) Questions to the Procurement Officer shall be submitted via e-mail to the following e-mail address: michael.howard@maryland.gov. Please identify in the subject line the Solicitation Number and Title. Questions, both oral and written, will also be accepted from prospective Contractors attending the Conference. If possible and appropriate, these questions will be answered at the Conference.

Questions will also be accepted subsequent to the Conference and should be submitted to the Procurement Officer (**see above email address**) in a timely manner prior to the Proposal due date. Questions are requested to be submitted at least five (5) days prior to the Proposal due date. The Procurement Officer, based on the availability of time to research and communicate an answer, shall decide whether an answer can be given before the Proposal due date. Time permitting, answers to all substantive questions that have not previously been answered, and are not clearly specific only to the requestor, will be distributed to all vendors that are known to have received a copy of the RFP in sufficient time for the answer to be taken into consideration in the Proposal.

1.10 Procurement Method

This Contract will be awarded in accordance with the Competitive Sealed Proposals method under COMAR 21.05.03.

1.11 Proposals Due (Closing) Date and Time

Proposals, in the number and form set forth in Section 4.2 "Proposals" must be received by the Procurement Coordinator at the address listed on the Key Information Summary Sheet, no later than **2:00 PM** Local Time on **09/26/2014** in order to be considered.

Requests for extension of this time or date will not be granted. Contractors mailing Proposals should allow sufficient mail delivery time to ensure timely receipt by the Procurement Coordinator. Except as provided in COMAR 21.05.02.10, Proposals received after the due date and time listed in this section will not be considered.

Proposals may be modified or withdrawn by written notice received by the Procurement Officer before the time and date set forth in this section for receipt of Proposals.

Proposals may not be submitted by e-mail or facsimile. Proposals will not be opened publicly.

Vendors not responding to this solicitation are requested to submit the “Notice to Vendors” form, which includes company information and the reason for not responding (e.g., too busy, cannot meet mandatory requirements, etc.). This form is located in the RFP immediately following the Title Page (page ii).

1.12 Multiple or Alternate Proposals

Multiple and/or alternate Proposals will not be accepted.

1.13 Economy of Preparation

Proposals should be prepared simply and economically and provide a straightforward and concise description of the Contractor’s Proposal to meet the requirements of this RFP.

1.14 Public Information Act Notice

An Contractor should give specific attention to the clear identification of those portions of its Proposal that it considers confidential and/or proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by the State under the Public Information Act, Md. Code Ann., State Government Article, Title 10, Subtitle 6. (Also, see RFP Section 4.4.3.2 “Claim of Confidentiality”). This confidential and/or proprietary information should be identified by page and section number and placed after the Title Page and before the Table of Contents in the Technical Proposal and if applicable, separately in the Financial Proposal.

Contractors are advised that, upon request for this information from a third party, the Procurement Officer is required to make an independent determination whether the information must be disclosed.

1.15 Award Basis

The Contract shall be awarded to the responsible Contractor submitting the Proposal that has been determined to be the most advantageous to the State, considering price and evaluation factors set forth in this RFP (see COMAR 21.05.03.03F), for providing the goods and services as specified in this RFP. See RFP Section 5 for further award information

1.16 Oral Presentation

Contractors may be required to make oral presentations to State representatives. Contractors must confirm in writing any substantive oral clarification of, or change in, their Proposals made in the course of discussions. Any such written clarifications or changes then become part of the Contractor's Proposal and are binding if the Contract is awarded. The Procurement Officer will notify Contractors of the time and place of oral presentations.

1.17 Duration of Proposal

Proposals submitted in response to this RFP are irrevocable for 120 days following the closing date for submission of Proposals or best and final offers if requested. This period may be extended at the Procurement Officer's request only with the Contractor's written agreement.

1.18 Revisions to the RFP

If it becomes necessary to revise this RFP before the due date for Proposals, the Department shall endeavor to provide addenda to all prospective Contractors that were sent this RFP or which are otherwise known by the Procurement Officer to have obtained this RFP. In addition, addenda to the RFP will be posted on the DHMH Current Procurements web page and through eMM. It remains the responsibility of all prospective Contractors to check all applicable websites for any addenda issued prior to the submission of Proposals. Addenda made after the due date for Proposals will be sent only to those Contractors that submitted a timely Proposal and that remain under award consideration as of the issuance date of the addenda.

Acknowledgment of the receipt of all addenda to this RFP issued before the Proposal due date shall be included in the Transmittal Letter accompanying the Contractor's Technical Proposal. Acknowledgement of the receipt of addenda to the RFP issued after the Proposal due date shall be in the manner specified in the addendum notice. Failure to acknowledge receipt of an addendum does not relieve the Contractor from complying with the terms, additions, deletions, or corrections set forth in the addendum.

1.19 Cancellations

The State reserves the right to cancel this RFP, accept or reject any and all Proposals, in whole or in part, received in response to this RFP, to waive or permit the cure of minor irregularities, and to conduct discussions with all qualified or potentially qualified Contractors in any manner necessary to serve the best interests of the State. The State also reserves the right, in its sole discretion, to award a Contract based upon the written Proposals received without discussions or negotiations.

1.20 Incurred Expenses

The State will not be responsible for any costs incurred by any Contractor in preparing and submitting a Proposal, in making an oral presentation, in providing a demonstration, or in performing any other activities related to submitting a Proposal in response to this solicitation.

1.21 Protest/Disputes

Any protest or dispute related, respectively, to this solicitation or the resulting Contract shall be subject to the provisions of COMAR 21.10 (Administrative and Civil Remedies).

1.22 Contractor Responsibilities

The selected Contractor shall be responsible for all products and services required by this RFP. All subcontractors must be identified and a complete description of their role relative to the Proposal must be included in the Contractor's Proposal. If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate Attachment(s) of this RFP (see Section 1.33 "Minority Business Enterprise Goals" and Section 1.41 "Veteran-Owned Small Business Enterprise Goals.").

If an Contractor that seeks to perform or provide the services required by this RFP is the subsidiary of another entity, all information submitted by the Contractor, including but not limited to references, financial reports, or experience and documentation (e.g. insurance policies, bonds, letters of credit) used to meet minimum qualifications, if any, shall pertain exclusively to the Contractor, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Contractor's Proposal shall contain an explicit statement that the parent organization will guarantee the performance of the subsidiary.

A parental guarantee of the performance of the Contractor under this Section will not automatically result in crediting the Contractor with the experience and/or qualifications of the parent under any evaluation criteria pertaining to the Contractor's experience and qualifications. Instead, the Contractor will be evaluated on the extent to which the State determines that the experience and qualification of the parent are transferred to and shared with the Contractor, the parent is directly involved in the performance of the Contract, and the value of the parent's participation as determined by the State.

1.23 Substitution of Personnel

A. Continuous Performance of Key Personnel

Unless substitution is approved per paragraphs B-D of this section, key personnel shall be the same personnel proposed in the Contractor's Technical Proposal, which will be incorporated into the Contract by reference. Such identified key personnel shall perform continuously for the duration of the Contract, or such lesser duration as specified in the Technical Proposal. Key personnel may not be removed by the Contractor from working under this Contract, as described in the RFP or the Contractor's Technical Proposal, without the prior written approval of the Contract Monitor.

If the Contract is task order based, the provisions of this section apply to key personnel identified in each task order proposal and agreement.

B. Definitions

For the purposes of this section, the following definitions apply:

Extraordinary Personal Circumstance – means any circumstance in an individual's personal life that reasonably requires immediate and continuous attention for more than fifteen (15) days and that precludes the individual from performing his/her job duties under this Contract. Examples of such circumstances may include, but are not limited to: a sudden leave of absence to care for a family member who is injured, sick, or incapacitated; the death of a family member, including the

need to attend to the estate or other affairs of the deceased or his/her dependents; substantial damage to, or destruction of, the individual's home that causes a major disruption in the individual's normal living circumstances; criminal or civil proceedings against the individual or a family member; jury duty; and military service call-up.

Incapacitating – means any health circumstance that substantially impairs the ability of an individual to perform the job duties described for that individual's position in the RFP or the Contractor's Technical Proposal.

Sudden – means when the Contractor has less than thirty (30) days' prior notice of a circumstance beyond its control that will require the replacement of any key personnel working under the Contract.

C. Key Personnel General Substitution Provisions

The following provisions apply to all of the circumstances of staff substitution described in paragraph D of this section.

1. The Contractor shall demonstrate to the Contract Monitor's satisfaction that the proposed substitute key personnel have qualifications at least equal to those of the key personnel for whom the replacement is requested.
2. The Contractor shall provide the Contract Monitor with a substitution request that shall include:
 - A detailed explanation of the reason(s) for the substitution request;
 - The resume of the proposed substitute personnel, signed by the substituting individual and his/her formal supervisor;
 - The official resume of the current personnel for comparison purposes; and
 - Any evidence of any required credentials.
3. The Contract Monitor may request additional information concerning the proposed substitution. In addition, the Contract Monitor and/or other appropriate State personnel involved with the Contract may interview the proposed substitute personnel prior to deciding whether to approve the substitution request.
4. The Contract Monitor will notify the Contractor in writing of: (i) the acceptance or denial, or (ii) contingent or temporary approval for a specified time limit, of the requested substitution. The Contract Monitor will not unreasonably withhold approval of a requested key personnel replacement.

D. Replacement Circumstances

1. Voluntary Key Personnel Replacement

To voluntarily replace any key personnel, the Contractor shall submit a substitution request as described in paragraph C of this section to the Contract Monitor at least fifteen (15) days prior to the intended date of change. Except in a circumstance described in paragraph D.2 of this clause, a substitution may not occur unless and until the Contract Monitor approves the substitution in writing.

2. Key Personnel Replacement Due to Vacancy

The Contractor shall replace key personnel whenever a vacancy occurs due to the sudden termination, resignation, leave of absence due to an Extraordinary Personal Circumstance, Incapacitating injury, illness or physical condition, or death of such personnel. (A termination or resignation with thirty (30) days or more advance notice shall be treated as a Voluntary Key Personnel Replacement as per Section D.1 of this section.)

Under any of the circumstances set forth in this paragraph D.2, the Contractor shall identify a suitable replacement and provide the same information or items required under paragraph C of this section within fifteen (15) days of the actual vacancy occurrence or from when the Contractor first knew or should have known that the vacancy would be occurring, whichever is earlier.

3. Key Personnel Replacement Due to an Indeterminate Absence

If any key personnel has been absent from his/her job for a period of ten (10) days due to injury, illness, or other physical condition, leave of absence under a family medical leave, or an Extraordinary Personal Circumstance and it is not known or reasonably anticipated that the individual will be returning to work within the next twenty (20) days to fully resume all job duties, before the 25th day of continuous absence, the Contractor shall identify a suitable replacement and provide the same information or items to the Contract Monitor as required under paragraph C of this section.

However, if this person is available to return to work and fully perform all job duties before a replacement has been authorized by the Contract Monitor, at the option and sole discretion of the Contract Monitor, the original personnel may continue to work under the Contract, or the replacement personnel will be authorized to replace the original personnel, notwithstanding the original personnel's ability to return.

4. Directed Personnel Replacement.

- a. The Contract Monitor may direct the Contractor to replace any personnel who are perceived as being unqualified, non-productive, unable to fully perform the job duties due to full or partial Incapacity or Extraordinary Personal Circumstance, disruptive, or known, or reasonably believed, to have committed a major infraction(s) of law, agency, or Contract requirements. Normally, a directed personnel replacement will occur only after prior notification of problems with requested remediation, as described in paragraph 4.b. If after such remediation the Contract Monitor determines that the personnel performance has not improved to the level necessary to continue under the Contract, if at all possible at least fifteen (15) days notification of a directed replacement will be provided. However, if the Contract Monitor deems it necessary and in the State's best interests to remove the personnel with less than fifteen (15) days' notice, the Contract Monitor can direct the removal in a timeframe of less than fifteen (15) days, including immediate removal.

In circumstances of directed removal, the Contractor shall, in accordance with paragraph C of this section, provide a suitable replacement for approval within fifteen (15) days of the notification of the need for removal, or the actual removal, whichever occurs first.

- b. If deemed appropriate in the discretion of the Contract Monitor, the Contract Monitor shall give written notice of any personnel performance issues to the Contractor,

describing the problem and delineating the remediation requirement(s). The Contractor shall provide a written Remediation Plan within ten (10) days of the date of the notice and shall implement the Remediation Plan immediately upon written acceptance by the Contract Monitor. If the Contract Monitor rejects the Remediation Plan, the Contractor shall revise and resubmit the plan to the Contract Monitor within five (5) days, or in the timeframe set forth by the Contract Monitor in writing.

Should performance issues persist despite the approved Remediation Plan, the Contract Monitor will give written notice of the continuing performance issues and either request a new Remediation Plan within a specified time limit or direct the substitution of personnel whose performance is at issue with a qualified substitute, including requiring the immediate removal of the key personnel at issue.

Replacement or substitution of personnel under this section shall be in addition to, and not in lieu of, the State's remedies under the Contract or which otherwise may be available at law or in equity.

1.24 Mandatory Contractual Terms

By submitting a Proposal in response to this RFP, a Contractor, if selected for award, shall be deemed to have accepted the terms and conditions of this RFP and the Contract, attached herein as **Attachment A**. Any exceptions to this RFP or the Contract shall be clearly identified in the Executive Summary of the Technical Proposal. **A Proposal that takes exception to these terms may be rejected (see RFP Section 4.4.3.4).**

1.25 Bid/Proposal Affidavit

A Proposal submitted by a Contractor must be accompanied by a completed Bid/Proposal Affidavit. A copy of this Affidavit is included as **Attachment B** of this RFP.

1.26 Contract Affidavit

All Contractors are advised that if a Contract is awarded as a result of this solicitation, the successful Contractor will be required to complete a Contract Affidavit. A copy of this Affidavit is included as **Attachment C** of this RFP. This Affidavit must be provided within five (5) Business Days of notification of proposed Contract award. This Contract Affidavit will also be required to be completed by the Contractor prior to any Contract renewals, including the exercise of any options or modifications that may extend the Contract term.

1.27 Compliance with Laws/Arrearages

By submitting a Proposal in response to this RFP, the Contractor, if selected for award, agrees that it will comply with all Federal, State, and local laws applicable to its activities and obligations under the Contract.

By submitting a response to this solicitation, each Contractor represents that it is not in arrears in the payment of any obligations due and owing the State, including the payment of taxes and employee

benefits, and that it shall not become so in arrears during the term of the Contract if selected for Contract award.

1.28 Verification of Registration and Tax Payment

Before a business entity can do business in the State it must be registered with the State Department of Assessments and Taxation (SDAT). SDAT is located at State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. The SDAT website is <http://www.dat.state.md.us/sdatweb/services.html> .

It is strongly recommended that any potential Contractor complete registration prior to the due date for receipt of Proposals. A Contractor's failure to complete registration with SDAT may disqualify an otherwise successful Contractor from final consideration and recommendation for Contract award.

1.29 False Statements

Contractors are advised that Md. Code Ann., State Finance and Procurement Article, § 11-205.1 provides as follows:

1.29.1 In connection with a procurement contract a person may not willfully:

- (a) Falsify, conceal, or suppress a material fact by any scheme or device;
- (b) Make a false or fraudulent statement or representation of a material fact; or
- (c) Use a false writing or document that contains a false or fraudulent statement or entry of a material fact.

1.29.2 A person may not aid or conspire with another person to commit an act under subsection (1) of this section.

1.29.3 A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding five years or both.

1.30 Payments by Electronic Funds Transfer

By submitting a response to this solicitation, the Bidder/Contractor agrees to accept payments by electronic funds transfer (EFT) unless the State Comptroller's Office grants an exemption. Payment by EFT is mandatory for contracts exceeding \$100,000. The selected Bidder/Contractor shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form. Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form, must include the business identification information as stated on the form, and must include the reason for the exemption. The COT/GAD X-10 form may be downloaded from the Comptroller's website at: http://comptroller.marylandtaxes.com/Government_Services/State_Accounting_Information/Static_Files/APM/gadx-10.pdf

1.31 Prompt Payment Policy

This procurement and the Contract(s) to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor’s Office of Minority Affairs (GOMA) and dated August 1, 2008. Promulgated pursuant to Md. Code Ann., State Finance and Procurement Article, §§ 11-201, 13-205(a), and Title 14, Subtitle 3, and COMAR 21.01.01.03 and 21.11.03.01, the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The Contractor must comply with the prompt payment requirements outlined in the Contract, Section 31 “Prompt Payment” (see **Attachment A**). Additional information is available on GOMA’s website at:
http://goma.maryland.gov/Legislation%20Docs/PROMPTPAYMENTFAQs_000.pdf.

1.32 Electronic Procurements Authorized

- A. Under COMAR 21.03.05, unless otherwise prohibited by law, DHMH may conduct procurement transactions by electronic means, including the solicitation, bidding, award, execution, and administration of a contract, as provided in Md. Code Ann., Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.
- B. Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Bidder/Contractor to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the solicitation or the Contract.
- C. “Electronic means” refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes facsimile, e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., <https://emaryland.buyspeed.com/bsol/>), and electronic data interchange.
- D. In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., § 1.30 “Payments by Electronic Funds Transfer”) and subject to the exclusions noted in section E of this subsection, the following transactions are authorized to be conducted by electronic means on the terms described:
 - 1. The Procurement Officer may conduct the procurement using eMM, e-mail, or facsimile to issue:
 - (a) the solicitation (e.g., the IFB/RFP);
 - (b) any amendments;
 - (c) pre-Bid/Proposal conference documents;
 - (d) questions and responses;
 - (e) communications regarding the solicitation or Bid/Proposal to any Bidder/Contractor or potential Bidder/Contractor;
 - (f) notices of award selection or non-selection; and
 - (g) the Procurement Officer’s decision on any Bid protest or Contract claim.
 - 2. A Bidder/Contractor or potential Bidder/Contractor may use e-mail or facsimile to:
 - (a) ask questions regarding the solicitation;

- (b) reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer's request or direction to reply by e-mail or facsimile, but only on the terms specifically approved and directed by the Procurement Officer;
 - (c) submit a "No Bid/Proposal Response" to the solicitation.
3. The Procurement Officer, the Contract Monitor, and the Contractor may conduct day-to-day Contract administration, except as outlined in Section E of this subsection utilizing e-mail, facsimile, or other electronic means if authorized by the Procurement Officer or Contract Monitor.
- E. The following transactions related to this procurement and any Contract awarded pursuant to it are *not authorized* to be conducted by electronic means:
- 1. submission of initial Bids or Proposals;
 - 2. filing of Bid Protests;
 - 3. filing of Contract Claims;
 - 4. submission of documents determined by DHMH to require original signatures (e.g., Contract execution, Contract modifications, etc.); or
 - 5. any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor or Bidder/Contractor be provided in writing or hard copy.
- F. Any facsimile or e-mail transmission is only authorized to the facsimile numbers or e-mail addresses for the identified person as provided in the solicitation, the Contract, or in the direction from the Procurement Officer or Contract Monitor.

1.33 Minority Business Enterprise Goals

There is no MBE subcontractor participation goal for this procurement.

1.34 Living Wage Requirements

A solicitation for services under a State contract valued at \$100,000 or more may be subject to Md. Code Ann., State Finance and Procurement Article, Title 18. Additional information regarding the State's living wage requirement is contained in **Attachment G**. Bidders/Contractors must complete and submit the Maryland Living Wage Requirements Affidavit of Agreement (**Attachment G-1**) with their Bid/Proposal. If a Bidder/Contractor fails to complete and submit the required documentation, the State may determine a Bidder/Contractor to be not responsible under State law.

Contractors and subcontractors subject to the Living Wage Law shall pay each covered employee at least the minimum amount set by law for the applicable Tier area. The specific living wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State. The Tier 1 Area includes Montgomery, Prince George's, Howard, Anne Arundel and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. In the event that the employees who perform the services are not located in the State, the head of the unit responsible for a State Contract pursuant to §18-102(d) of the State Finance and Procurement Article shall assign the tier based upon where the recipients of the services are located.

The Contract resulting from this solicitation will be determined to be a Tier 1 Contract or a Tier 2 Contract depending on the location(s) from which the Contractor provides 50% or more of the services. The Bidder/Contractor must identify in its Bid/Proposal the location(s) from which services will be provided, including the location(s) from which 50% or more of the Contract services will be provided.

- If the Contractor provides 50% or more of the services from a location(s) in a Tier 1 jurisdiction(s) the Contract will be a Tier 1 Contract.
- If the Contractor provides 50% or more of the services from a location(s) in a Tier 2 jurisdiction(s), the Contract will be a Tier 2 Contract.
- If the Contractor provides more than 50% of the services from an out-of-State location, the State agency determines the wage tier based on where the majority of the service recipients are located. In this circumstance, this Contract will be determined to be a Tier 1 Contract.

Information pertaining to reporting obligations may be found by going to the Maryland Department of Labor, Licensing and Regulation (DLLR) website <http://www.dllr.state.md.us/labor/prev/livingwage.shtml>.

NOTE: Whereas the Living Wage may change annually, the Contract price may not be changed because of a Living Wage change.

1.35 Federal Funding Acknowledgement

This Contract does not contain Federal funds.

1.36 Conflict of Interest Affidavit and Disclosure

Bidders/Contractors shall complete and sign the Conflict of Interest Affidavit and Disclosure (**Attachment I**) and submit it with their Bid/Proposal. All Bidders/Contractors are advised that if a Contract is awarded as a result of this solicitation, the successful Contractor's personnel who perform or control work under this Contract and each of the participating subcontractor personnel who perform or control work under this Contract shall be required to complete agreements substantially similar to **Attachment I** Conflict of Interest Affidavit and Disclosure. For policies and procedures applying specifically to Conflict of Interests, the Contract is governed by COMAR 21.05.08.08.

1.37 Non-Disclosure Agreement

All Bidders/Contractors are advised that this solicitation and any resultant Contract(s) are subject to the terms of the Non-Disclosure Agreement (NDA) contained in this solicitation as **Attachment J**. This Agreement must be provided within five (5) Business Days of notification of proposed Contract award; however, to expedite processing, it is suggested that this document be completed and submitted with the Bid/Proposal.

1.38 HIPAA - Business Associate Agreement

Based on the determination by DHMH that the functions to be performed in accordance with this solicitation constitute Business Associate functions as defined in HIPAA, the recommended awardee shall execute a Business Associate Agreement as required by HIPAA regulations at 45 C.F.R. §164.501 and set forth in **Attachment K**. This Agreement must be provided within five (5) Business Days of notification of proposed Contract award; however, to expedite processing, it is suggested that this document be completed and submitted with the Bid/Proposal. Should the Business Associate Agreement not be submitted upon expiration of the five (5) Business Day period as required by this solicitation, the Procurement Officer, upon review of the Office of the Attorney General and approval of the Secretary, may withdraw the recommendation for award and make the award to the responsible Bidder/Contractor with the next lowest Bid or next highest overall-ranked Proposal.

1.39 Nonvisual Access

This solicitation does not contain Information Technology (IT) provisions requiring Nonvisual Access.

1.40 Mercury and Products That Contain Mercury

This solicitation does not include the procurement of products known to likely include mercury as a component.

1.41 Veteran-Owned Small Business Enterprise Goals

There is no Veteran-Owned Small Business Enterprise (VSBE) subcontractor participation goal for this procurement.

1.42 Location of the Performance of Services Disclosure

This solicitation requires a Location of the Performance of Services Disclosure to be completed. (See Attachment M)

1.43 Department of Human Resources (DHR) Hiring Agreement

THIS SOLICITATION DOES NOT REQUIRE A DHR HIRING AGREEMENT. THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

SECTION 2 – MINIMUM QUALIFICATIONS

2.1 Contractor Minimum Qualifications

A Contractor must provide proof with its Proposal that the following Minimum Qualifications have been met:

- 2.1.1 The Offeror must have a minimum of five years' experience in providing rehabilitation services to healthcare practitioners. As proof of meeting this qualification, the Offeror must submit three references who can collectively attest to the Offeror's five years of experience. References must be submitted per the requirements of Section 4.7.

- 2.1.2 The Offeror must be a nonprofit entity. Md. Health Occ. Code Ann. § 14-401.1(g) requires the Board to issue an RFP and enter into a written contract with a nonprofit entity to provide rehabilitation services only for physicians or allied health professionals directed by the Board and referred in writing to receive rehabilitation services. As proof of meeting this minimum qualification, the Offeror must provide a copy of its Internal Revenue Code 501 (C) 3 tax exemption status determination letter or documentation from the IRS Exempt Organization Select Check indicating its nonprofit status.

SECTION 3 – SCOPE OF WORK

3.1 Background and Purpose

- 3.1.1 The purpose of this solicitation is to successfully establish and maintain a Rehabilitation Program open to only those physicians and allied health professionals who are directed by the Board and/or referred in writing to receive services.
- 3.1.2 The Maryland Board of Physicians (Board), a unit of the Department of Health and Mental Hygiene of the State of Maryland, hereinafter called the "Department" or "Issuing Office" is soliciting proposals from qualified Contractors to provide rehabilitation services to impaired physicians and allied health professionals regulated by the Board who are directed by the Board in writing to receive treatment and rehabilitation for alcoholism, chemical dependency or other physical, emotional or mental conditions. These services are intended to provide practitioners assistance in addressing alcohol or drug abuse problems, or other physical or mental conditions which may impair their ability to practice medicine or safely perform medical acts within their scope of practice. Rehabilitation services include evaluation, referral for treatment, and case management to monitor the adherence of participants with a written disposition agreement and/or order of the Board and the rehabilitation agreement and Rehabilitation Plan. These services would be active monitoring of the participant, chemical screens and worksite monitoring. Licensees who are compliant with their agreements and orders can practice safely and continue to be able to provide medical care to the citizens of Maryland. The over-riding goal of the program is to enhance the health and safety of the citizens of Maryland.
- 3.1.3 The program will serve only physicians and allied health professionals who are directed by the Board and referred in writing to receive services.
- 3.1.4 Md. Health Occ. Code Ann. § 14-401.1(g) requires the Board to issue an RFP and enter into a written contract with a nonprofit entity to provide rehabilitation services only for physicians or allied health professionals directed by the Board and referred in writing to receive rehabilitation services. The Contractor must provide a copy of the letter from the IRS stating they have a 501(c) (3) designation. (See Section 2.1.2.)
- 3.1.5 There are approximately 29,000 licensed physicians and 14,000 allied health professionals in the State of Maryland. There are approximately 65 participants in the Board's current rehabilitation program. Those individuals who are required under a Board order or disposition agreement to participate in the Rehabilitation Program are referred to in this document as participants.
- 3.1.6 The Board usually requires participants to be enrolled in and monitored by a program providing rehabilitation services for a term to be determined by the clinical team at the Rehabilitation Program. Each participant's term of monitoring will be determined by the Board following the receipt of clinical recommendations by the Contractor.
- 3.1.7 The Board estimates that a maximum of 100 participants will be served at any one time during the Contract period. At the beginning of the Contract period, the Board will provide the Contractor with copies of disposition agreements, Board orders, and other necessary files relating to participants. The Board estimates that there will be approximately 65 participants who will be

required to transfer to the Contractor as of the Go-Live Date.

3.2 Scope of Work - Requirements

3.2.1 SERVICES TO BE PERFORMED

3.2.1.1. The Contractor shall provide services only to physicians and allied health professionals directed by the Board to provide and referred in writing to receive rehabilitation services. The Contractor shall have an office in Maryland and must have the capability to provide face-to-face services to participants throughout Maryland. The Contractor must provide a Rehabilitation Program that includes, but is not limited to the following elements:

- (a) Organization and participation in the Rehabilitation Committee;
- (b) Evaluation and Rehabilitation Planning;
- (c) Referral for evaluation, and treatment services, as needed, to providers licensed and/or certified in the jurisdiction in which the evaluations and treatment are provided;
- (d) Periodic review of each participant's Rehabilitation Plan;
- (e) Case management to monitor participants;
- (f) Reporting participants' noncompliance to the Board;
- (g) Consultation with Board Staff, Administrative Prosecutors, and/or Disciplinary Panels on an as-needed basis, regarding individuals with impairments and/or mental health issues;
- (h) Reports and documents as requested by the Board and/or Administrative Prosecutor for other investigative and monitoring purposes; testimony at administrative hearings if subpoenaed.
- (i) Quarterly and Annual Reports to the Board on each participant and aggregate data;
- (j) Retention and maintenance of confidential participant records for 5 (five) years
- (k) Forms (See Attachments R and S)
- (l) Contractor Transition at End of Contract.
- (m) Shall provide clinical oversight to Rehabilitation Program.
- (n) Shall review, approve, and sign the Rehabilitation Agreement and a Rehabilitation Plan for each program participant.
- (o) Upon written notification by the Board, the physician or allied health professional must contact the Contractor to enroll in the Rehabilitation Program.
- (p) Duration of a participant's agreement is determined by the Board based on the recommendations of the Contractor.
- (q) Contractor will collect blood and /or urine samples for the initial chemical screening – participant bears the cost of this screening.
- (r) Direct participants in obtaining testing for chemical and alcohol screenings throughout the duration of the Treatment Plan.
- (s) Provide an organizational plan that includes all staff positions that will service the Rehabilitation Program, job titles, current licensure and certifications of staff, and percentage of time spent by the designated staff for the Rehabilitation Program contracted services.

3.2.1.2 Rehabilitation Committee

- (a) The Contractor shall set up an oversight committee to be known as the Rehabilitation Committee.
- (b) The Committee shall meet once or twice per year at the request of the Board to review program activities.
- (c) The purpose of the Committee is to provide oversight and advice to the Rehabilitation Program
- (d) The Contractor shall schedule meetings and set up the agendas for the meetings. The Contractor in conjunction with the Board will determine the committee members. The Board must approve all committee members. Meetings can be held on State property or the Contractor's property.

3.2.2 Evaluation and Rehabilitation Planning

3.2.2.1 Intake

The Contractor shall establish an intake process including orientation, face-to-face contact, and initial assessment to determine whether the participant needs the services of the Rehabilitation Program. Orientation should address the purpose of the program, requirements & benefits of participation, structure of the program, and an explanation of the Rehabilitation Agreement, the Rehabilitation Plan, and monitoring and reporting requirements to the Board. Intakes shall occur after referral by the Board.

3.2.2.2 Evaluation and Treatment recommendations and referral to appropriate inpatient and outpatient treatment sources.

The Contractor will make recommendations to appropriate inpatient and outpatient treatment sources. The Contractor will maintain a network of referral resources from which to make these treatment recommendations.

3.2.2.3 Access and criteria for treatment plan

The Contractor shall provide the participant with providers or facilities that offer the particular assessment, evaluation, inpatient or outpatient treatment, and/or chemical screens needed by the participant. The Contractor determines the provider or facility that can provide the required service in the best interest of the participant.

If the participant has already entered into a treatment program that the Contractor considers appropriate in light of the assessment findings, the Contractor may incorporate this treatment into the participant's Rehabilitation Plan. This inclusion is at the discretion of the Contractor.

All providers listed, both facilities and individuals, shall have licensure and/or certification to provide the proposed services in the jurisdiction where treatment is to be provided. The Contractor, or employees and agents of the Contractor shall not refer a participant for any evaluation, inpatient or outpatient treatment, tests, monitoring, or any other services if the referral violates the prohibitions against self-referral in Health Occupations Article, §1-301 et seq.,

Annotated Code of Maryland, COMAR 10.01.15, and if applicable, the federal anti-kickback statute at 42 U.S.C. §§1320a-7b(b), and the federal Stark law at 42 U.S.C. §1395nn preventing self-referrals. The Contractor shall maintain a list of authorized treatment providers and a description of the qualifications of each. In addition, a list shall be maintained of all providers to whom referrals have been made.

3.2.2.4 Rehabilitation Agreement between each participant and the Contractor

As a condition of participation in the Rehabilitation Program, the Contractor shall require each participant to sign the Maryland Rehabilitation Program Agreement (Attachment O). This agreement commits the participant to meet the requirements of the Rehabilitation Program and informs the participant about the requirements for the Rehabilitation Program to submit reports about participants to the Board.

The sample found in Attachment O contains the minimum number and type of items to be included in the Rehabilitation Agreement. The Contractor may propose the use of an alternate Rehabilitation Agreement if it contains all the provisions of Attachment O and is a single form which can be used with all participants. The proposed alternate form shall be submitted with the proposal and may be used in lieu of the Attachment O form if approved by the Board. The Board may request that the Rehabilitation Agreement Form be modified during the course of the Contract, and the Contractor shall make the requested modifications.

Procedure for new applicants or participants who pose a danger to self or others: If, at the time of the initial assessment or after the practitioner has signed a Rehabilitation Agreement, the Contractor believes that the practitioner is a danger to self or others, that information shall be reported to the Board, following the procedure outlined in paragraph 3.2.6 below. If the Contractor determines the participant is a danger to self or others, the Contractor may recommend to the Board that the participant be removed from the Rehabilitation Program.

3.2.3 Consent Forms

3.2.3.1 When the Rehabilitation Agreement is signed, the Contractor shall also obtain the participant's signature on consent forms. Attachment Q is a consent form which allows the Contractor to release records to the Board. The Board may require the form to be signed prior to the referral. This form shall be signed by each participant no later than the time that the Rehabilitation Agreement is signed. It complies with federal regulations at 42 C.F.R. §2.31 governing the form of written consent forms for release of alcohol and drug abuse records. The Contractor may propose the use of alternative consent forms that comply with 42 C.F.R. §2.31. Such alternative form shall be submitted with the Contractor's proposal and may be used in lieu of the Attachment Q if approved by the Board. The Board may request the consent form be modified during the Contract and the Contractor shall make the requested modifications.

The Contractor shall exchange information with other individuals that include therapists, worksite monitors, and entities that include inpatient programs or medical institutions in order to

monitor the participant. Attachment P is a sample consent form which complies with the federal regulations at 42 C.F.R. §2.31 governing the form of written consent forms for release of alcohol and drug abuse records. The Contractor may propose the use of alternative consent forms that comply with 42 C.F.R. §2.31. Such alternative form shall be submitted with the Contractor proposal and may be used in lieu of the Attachment P if approved by the Board. Information exchanged shall be forwarded to the Board on a quarterly basis.

3.2.4 Rehabilitation Plan

3.2.4.1 The Contractor shall require each participant to enter into a written plan which the Contractor shall update regularly. The plan shall set forth specific requirements that the participant shall complete, including physical or mental evaluation, inpatient or outpatient treatment, attendance at Alcoholics Anonymous, Narcotics Anonymous, or similar group meetings, chemical screens, regular medication, and the schedule for meetings with the participant's case manager. The Contractor shall provide a clinical manager that shall administer each participant's Rehabilitation Plan. The Rehabilitation Plan shall be signed by the participant and the medical director of the Rehabilitation Program. The Rehabilitation Plan form shall include at least the following types of information: required physical or mental evaluation, inpatient or outpatient treatment, attendance at Alcoholics Anonymous, Narcotics Anonymous, or similar group meetings, chemical screens, regular medication, and the schedule for meetings with the participant's clinical manager. A sample Rehabilitation Plan form may be found in Attachment R. The Contractor may offer with the proposal alternative individualized Rehabilitation Plan forms specifically formatted for substance abuse issues only, or mental health issues only, or other physical or emotional impairment issues. The forms shall be in compliance with 42 C.F.R. §2.31. The Board may request the Rehabilitation Plan be modified during the course of the Contract and the Contractor shall make the requested modifications.

3.2.5 Costs

All costs associated with treatment and chemical screens as described in the Rehabilitation Plan are the responsibility of the participant.

3.2.6 Procedure for new applicants or participants who pose a danger to self or others

If, at the time of the initial assessment or after the participant has signed a Rehabilitation Agreement, the Contractor believes that if the participant is a danger to self or others, it shall be reported immediately to the acting supervisor of probation, Gage Blair at (410) 764-2473 and by e-mail at Gage.blair@maryland.gov. Out of Office instructions will be sent via email reply or on telephone message. If the Contractor determines the participant is a danger to self or others, the Contractor may recommend to the Board, the participant be removed from the Rehabilitation Program.

3.2.6.1 Procedure for persons with no impairment, persons who have been identified as having no continued clinical benefit, or persons who do not agree to enter the Rehabilitation Program

If the initial assessment reveals no physical, emotional, or mental condition which could impair

the participant's practice of medicine, the Contract Monitor must be notified in writing on the next business day. If the contractor determines that there is no clinical benefit to continued participation, the Contractor should discharge the participant and notify the Contract Monitor in writing by the next Business Day. If the Rehabilitation Program determines that the participant requires services and the participant refuses to sign the appropriate consent forms or the rehabilitation agreement or plan, the Contractor shall notify the Board in writing on the next Business Day.

3.2.6.2 Procedure for persons who are terminated by the Rehabilitation Program for failure to comply with the Rehabilitation Agreement and Plan:

The Rehabilitation Program has the option to terminate its monitoring and other services in event that a participant does not comply with the Rehabilitation Agreement and Plan. If through the Rehabilitation Program, the Contractor makes the determination to terminate the Agreement before the formal end date, the Contractors shall inform the participant of the determination and shall notify the Board in writing no later than 2 Business Days after the termination of the Agreement.

3.2.7 Periodic review of Rehabilitation Plan:

The Contractor must re-evaluate the participant's progress in the Rehabilitation Plan re-evaluated through periodic reviews to determine the efficacy of the treatment plan and to make appropriate modifications. For participants in the first or second year of the Rehabilitation Program, the Contractor shall perform, at a minimum, a review every six months. During years three through five, reviews shall be performed at least annually. An updated Rehabilitation Plan and new consent to release confidential information forms shall be signed during each review. For all participants, a copy of the updated Rehabilitation Plan and consent forms shall be sent to the Board within 5 Business Days after being executed by the participant and the Contractor.

3.2.8 Recovery monitoring, including chemical screens, worksite monitoring and other means of monitoring a participant's compliance with the Rehabilitation Plan:

3.2.8.1 Active monitoring of the participant is critical to the recovery and rehabilitation process. The case manager is responsible for monitoring the treatment, compliance with practice and/or employment restrictions (when applicable), and other terms of the Rehabilitation Agreement and Rehabilitation Plan. The case manager should have contact with each participant in the caseload at a minimum of once per week and face-to-face contact no less than once every two months. The case manager shall track compliance with requirements of the Rehabilitation Plan, such as chemical screens, treatment by counselors or other health care professionals, attendance at self-help meetings, and other relevant information.

3.2.8.2 Chemical Screens: For participants with substance abuse problems, monitoring shall include random unscheduled chemical screens, directed by an automated random call-in system. The Contractor shall have the capability to provide local testing seven days a week if required by the Rehabilitation Plan. The Contractor shall present a plan for accurate specimen collection, as well as testing using split-screens. The Contractor shall provide a method for participants with

substance abuse problems to be subject to random unscheduled chemical screens by an automated random call-in system. The Contractor shall pre-approve participant vacations and shall test the participant upon returning. The participant is responsible for the cost of testing.

3.2.8.3 Medical Review Officer (MRO): The Contractor shall provide the Board with access to a Medical Review Officer to refer matters, issues and questions in regard to a positive drug or alcohol testing results. The MRO will provide an independent review of the testing results . The MRO is a consultant. The Contractor can determine the minimum qualifications for the MRO. The Board may bear the cost of the services of the MRO when the matters referenced above are referred by the Board.

3.2.8.4 Worksite Monitoring: If the Contractor determines there would be a clinical benefit to worksite monitoring, the Contractor will specify this in individual Rehabilitation Plans. A sample report appears in Attachment R The Contractor may submit a proposed alternate form with its proposal for use by the worksite monitor, which may be used if approved by the Board.

3.2.8.5 Out-of state participants: The Board may require the Contractor to monitor a practitioner who is not residing or practicing in Maryland. The out-of-state participant shall have a written Rehabilitation Agreement with a Rehabilitation Program in another state, and the program shall be one which is recognized by the out-of-state licensing board. The out-of-state program must directly monitor the participant's recovery including relapse management and practice status. The Contractor shall obtain at least quarterly, written verification by the out-of-state professional monitoring program that the participant is in compliance with his agreement. Any noncompliance shall be reported to the Board as directed in paragraph 3.2.9

3.2.9 Procedure for Reporting Non Compliance to the Board. All instances of Non-Compliance (see Section 1.2 for definition) shall be reported to the Board.

3.2.9.1 Critical Non Compliance Events

In the event of any of the following, the Contractor shall submit a report to the Board's Contract Monitor by telephone within one Business Day. Written confirmation in the form of a letter to the Contract Monitor shall be submitted within 2 Business Days and shall include any reason for the noncompliance provided by the participant:

- A. Failure to report for a scheduled chemical screen or failure to provide an adequate quantity of urine for analysis, regardless of the reason or excuse.
- B. A positive chemical screen; the Contractor shall send to the Board the lab report of the positive screen within 5 Business Days of the positive screen. The chemical screening is done by labs utilized by the Contractor and is paid for by the participant.
- C. Assessment by the Rehabilitation Program or a report from any hospital, facility, or employer indicating that the participant is a danger to self or others;

- D. Report from any hospital, facility, or employer that action has been taken against the participant's privileges to practice medicine;
- E. An arrest or conviction;
- F. Actual knowledge that the participant is under the influence of substances prohibited by the Agreement or Plan.

3.2.9.2 Non-Compliance with Board Referral

After an individual is referred by the Board, the Contractor shall have the individual evaluated, and in accord with the evaluation and the assessment of the Rehabilitation Program, shall enter the individual into a Rehabilitation Agreement within ten days and a Rehabilitation Plan within 30 days of the referral. The Contractor shall not meet with individuals prior to receiving the Board's referral.

3.2.9.3 Non-Completion of Contract

If the Contractor has not completed the evaluation and assessment and has not executed the Rehabilitation Agreement and Plan within one month of the referral, the Contractor shall give the Board a detailed written report about what parts of the process have been completed and any non-compliance or lack of cooperation by the individual referred.

If the individual referred by the Board does not contact the Rehabilitation Program and begin to work with the Rehabilitation Program within one month of the date of the referral, the Rehabilitation Program, no later than a month after the referral, shall report to the Board in writing the instances and details in regard to the lack of cooperation with the Rehabilitation Program.

3.2.9.3 Non-Completion of Agreement and Plan

Noncompliance for any reason shall be reported to the Board in writing by the clinical manager on a quarterly basis.

3.2.10 Quarterly and Annual Reports to the Board

3.2.10.1 The Contractor must submit quarterly reports are due to the Contract Monitor no later than October 15, January 15, April 15 and July 15th of each Contract Year. The Contractor shall provide the following for each participant (identified by name) during the quarter:

- A. Scheduled and actual attendance at therapy, self-help meetings, etc.;
- B. Status of and any changes in employment;
- C. Compliance with terms of Rehabilitation Plan;
- D. Frequency and results of chemical screens on the participant;
- E. Proposed changes in Rehabilitation Plan;

- F. Copies of all chemical screen reports (that is, complete laboratory reports) shall be included in the quarterly reports for each participant. The Contractor shall provide the reports when requested during each quarter;
- G. Current status of the agreement and plan, to include when the plan is due to be reviewed and updated; and
- H. Expenditures for treatment or chemical screens.

3.2.10.2 Aggregate data (including aggregate data on all participants), reported based on quarter and year-to-date, including, but limited to:

- A. Total Number of Participants;
- B. Number of participants under Final Board Orders, which are public sanctions imposed on the license and practice of health care practitioners after a formal hearing;
- C. Number of participants under Consent Order with the Board, which are public sanctions imposed on the license and practice of a health care practitioner which the practitioners agree to without a formal hearing;
- D. Number of participants under Disposition Agreements which are non-public orders.
- E. Number of participants who are applicants for licensure or certification;
- F. Number of participants by specific impairment, for example, alcoholism, chemical dependence, psychiatric condition, or dual diagnosis of more than one kind of impairment;
- G. Number of participants by medical specialty;
- H. Number of participants who are noncompliant;
- I. Number of new Rehabilitation Agreements signed;
- J. Number of Rehabilitation Agreements extended;
- K. Number of Rehabilitation Agreements terminated for successful completion;
- L. Number of Rehabilitation Agreements terminated for cause;
- M. Number of open Rehabilitation Agreements at end of quarter;
- N. Expenditures for treatment of participants who have been determined to be unable to afford services.
- O. **An annual report** shall be submitted to the Contract Monitor by July 31 of each year, beginning with July 31, 2015. The report shall include, at a minimum, the data categories listed under “Aggregate data” in section 3.2.10.2 above. The Contractor must propose a format for the quarterly and annual report in its technical proposal.

3.2.10.3 The Contractor shall serve as a consultant to the Maryland Department of Health and Mental Hygiene and the Board of Physicians with regard to impairment issues and may be required to testify at administrative hearings and/or legal proceedings involving issues related to enrolled participants. The Contractor shall meet with the Board or its representative at least quarterly, and/or whenever requested by the Board to report on the progress of monitoring and other aspects of the Rehabilitation Program. Based on historical contract data, it is estimated that the Contractor will spend 2 to 4 hours per week averaging 100 hours each year performing this requirement.

3.2.11 Other required reports-The Board may request information and documents in the Rehabilitation Program files in regard to a participant and the Contractor shall provide the information and documents on an as needs basis and in the timeframe requested.

3.2.12 Retention and maintenance of Confidential Participant Records

3.2.12.1 For purposes of this section, the term, “Contractor,” means the Contractor, its employees, its subcontractors and agents, the Rehabilitation Committee, and any staff of the Rehabilitation Program. To the extent that this section places a restriction on an employee, agent or subcontractor of the Contractor, the Contractor is responsible to inform any such employee, agent or subcontractor of these requirements, to require compliance by contract or otherwise, and to be responsible to take reasonable measures to assure the enforcement of these confidentiality requirements.

3.2.12.2 The Contractor shall maintain, in accordance to the Records Retention and Disposal Schedule, which will be provided to the Contractor by the Board, in strict confidentiality all records, files, reports received from the Board, created by the Contractor, or received from any source in the fulfillment of this Contract. The Contractor and its staff and the Board and its staff shall comply with the federal confidentiality provisions of 42 U.S.C. §290ee-3 and 42 C.F.R. Pt. 2 and the State confidentiality provisions of the Annotated Code of Maryland, Health-General Title 4, Subtitle 3 and § 8-601, and Health Occupations §§ 1-401, 14-410, 14-411, and 14 506. Neither the Contractor nor the Board shall make any disclosures except as permitted under those statutory provisions

3.2.13 Forms

3.2.13.1 The forms found in Attachments Q, R, and S are sample forms and may be used or adapted by the Contractor, with Board approval. Alternate forms Q, R and S shall be submitted as a part of the technical proposal. If alternate forms are not submitted with the proposal, the Contractor shall use the forms attached to this Solicitation.

3.2.14 Contractors Transition at Start of Contract

3.2.14.1 The Contractor shall serve participants currently enrolled in the Rehabilitation Program beginning on the effective date of the Contract with minimal disruption to those participants. Staff from the Board’s current rehabilitation program will be available to assist in this process.

Participants in the existing rehabilitation program who transfer to the new program will undergo an intake process and sign a new Rehabilitation Agreement and any necessary consent forms.

This will require, at a minimum, that the Contractor shall:

- A. Request from the current program staff a timely and orderly transfer of the records for current participants,
- B. Advise worksite monitors/health facilities of the transfer of monitoring services to the Contractor in advance of the effective date,
- C. Personally contact each participant to confirm that the participant has notice of and understands any new or revised procedures and requirements implemented as a result of the transfer of monitoring services to the Contractor,
- D. Personally meet with each participant transferring into the Rehabilitation Program and have

- the participant sign the Rehabilitation Agreement and plan and all relevant consent forms,
- E. Obtain the participant's signature on a consent form authorizing transfer of records and request transfer of any records not already released by current program staff, and
 - F. Review all existing Rehabilitation Agreements, Disposition Agreements, and Board orders of participants and work with the Board and each participant in executing a new Rehabilitation Agreement and Plan.

3.2.15 Contractor Transition at End of Contract

3.2.15.1 In the event that the Department notifies the Contractor that it intends to terminate this Contract or upon expiration of the Contract, the Contractor shall assist in implementing an orderly transfer of records and transition of services. This will require that the Contractor shall:

- A. Arrange for the timely and orderly transfer of all records for participants as directed by the Board,
- B. Advise all participants of the transfer of monitoring services to the Board in advance of the effective date, and
- C. Personally contact each participant in advance of the termination date to confirm that the participant has notice of and understands that Board's monitoring services will be provided after the termination date by the Board.

3.2.16 Audits

3.2.16.1 By law, the state's Legislative Auditors are required to perform an audit of the accounts and transactions of the Rehabilitation Program every two years. (Health Occupations, §§14-402(f) and 15-310(e)). The Contractor shall cooperate with the Legislative Auditors and provide all information necessary to assist them in completing the audit.

3.2.16.2 The Board of Physicians shall conduct periodic (no more than two times during a year) random audits of the Contractor's participant records. During this audit, all Rehabilitation Program records shall be available for inspection by the Contract Monitor in accord with 42 CFR, Chapter I, Part 2, Subpart D, § 2.53. Failure by the Contractor to provide a file may result in termination of the Contract.

3.2.17 Duties of the Board

3.2.17.1 The Board of Physicians will provide the Contractor with a signed consent form to release confidential documents to the Board of Physicians, disposition agreement, letter of referral or Board order for any practitioner referred by the Board to the Contractor for evaluation and/or monitoring.

3.2.17.2 In the event that the Contractor is selected under this procurement is not the incumbent for the same services, the Board will notify all participants of the change. The Board will require all participants to transfer to the new Contractor. If there is a change in vendor at the end of the Contract resulting from this procurement, the Board will undertake similar notification.

3.2.17.3 The Contractor shall provide a Physician Medical Director who:(a) Shall have a full, unrestricted physician's license in Maryland, be ABMS or AOA certified, and have a minimum of five (5) years' experience in treating persons with alcohol or chemical addictions or other physical, mental or emotional impairments.

3.2.17.4 An Organizational Plan should be provided that includes all staff positions that will service the Rehabilitation Program, job titles, current licensure and certifications of all staff, and percentages of time spent by this designated staff for the Rehabilitation Program contracted services.

3.2.18 Contractor Staffing

3.2.18.1 The Contractor must provide the staff listed in 3.2.18.1.1 and 3.2.18.1.2 with the qualifications stated therein throughout the duration of the Contract. The Contractor must provide that all staff persons for the Maryland Rehabilitation Program meet the respective qualifications for their position at all times during the Contract. The Offeror's proposal shall include resumes, job description and copies of professional licenses of proposed staff for the following staff positions (See Section 4.5). The following staff positions are designated Key Personnel and subject to the Substitution of Personnel Provisions contained in Section 1.23.

3.2.18.1.1 Physician Medical Director: The Contractor shall provide a Physician Medical Director. The Physician Medical Director must have a full, unrestricted physician's license in Maryland, be American Board of Medical Specialties or American Osteopathic Association certified, and have substantial experience in treating persons with alcohol or chemical addictions or other physical, mental, or emotional impairments. The Physician Medical Director must provide clinical oversight to the Rehabilitation Program and review, approve, and sign a Rehabilitation Agreement and a Rehabilitation Plan for each program participant.

3.2.18.1.2 Clinical Managers: An individual(s) licensed as a Licensed Clinical Social Worker designated by the Rehabilitation Program to inform, evaluate, refer a participant for appropriate treatment and meet with the participant face to face on a monthly basis. The Contractor must provide enough clinical managers such that each participant is assigned a clinical manager. Each clinical manager must be a recognized as a "LCSW-C" in the State of Maryland.

3.3 Security Requirements

3.3.1 Employee Identification

- (a) Each person who is an employee or agent of the Contractor or subcontractor shall display his or her company ID badge at all times while on State premises. Upon request of authorized State personnel, each such employee or agent shall provide additional photo identification.
- (b) At all times at any facility, the Contractor's personnel shall cooperate with State site requirements that include but are not limited to being prepared to be escorted at all times, providing information for badge issuance, and wearing the badge in a visible location at all times.

3.3.2 Information Technology

- (a) Contractors shall comply with and adhere to the State IT Security Policy and Standards. These policies may be revised from time to time and the Contractor shall comply with all such revisions. Updated and revised versions of the State IT Policy and Standards are available online at: www.doit.maryland.gov – keyword: Security Policy.
- (b) The Contractor shall not connect any of its own equipment to a State LAN/WAN without prior written approval by the State. The Contractor shall complete any necessary paperwork as directed and coordinated with the Contract Monitor to obtain approval by the State to connect Contractor-owned equipment to a State LAN/WAN.

3.3.3 Criminal Background Check

The Contractor shall obtain from each prospective employee a signed statement permitting a criminal background check. The Contractor shall secure at its own expense a Maryland State Police and/or FBI background check and shall provide the Contract Monitor with completed checks on all new employees prior to assignment. The Contractor may not assign an employee with a criminal record to work on this Contract unless prior written approval is obtained from the Contract Monitor.

3.4 Insurance Requirements

- 3.4.1 The Contractor shall maintain Commercial General Liability Insurance with limits sufficient to cover losses resulting from, or arising out of, Contractor action or inaction in the performance of the Contract by the Contractor, its agents, servants, employees, or subcontractors, but no less than a Combined Single Limit for Bodily Injury, Property Damage, and Personal and Advertising Injury Liability of \$1,000,000 per occurrence and \$3,000,000 aggregate.
- 3.4.2 The Contractor shall maintain Errors and Omissions/Professional Liability insurance with minimum limits of \$1,000,000 per occurrence.
- 3.4.3 The Contractor shall maintain Automobile and/or Commercial Truck Insurance as appropriate with Liability, Collision, and Personal Injury Protection limits no less than those required by the State where the vehicle(s) is registered, but in no case less than those required by the State of Maryland.
- 3.4.4 The Contractor shall maintain Employee Theft Insurance with minimum limits of \$1,000,000 per occurrence.
- 3.4.5 Within five (5) Business Days of recommendation for Contract award, the Contractor shall provide the Contract Monitor with current certificates of insurance, and shall update such certificates from time to time

but no less than annually in multi-year contracts, as directed by the Contract Monitor. Such copy of the Contractor's current certificate of insurance shall contain at minimum the following:

- a. Workers' Compensation – The Contractor shall maintain such insurance as necessary and/or as required under Workers' Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employers' Liability Act.
- b. Commercial General Liability as required in Section 3.4.1.
- c. Errors and Omissions/Professional Liability as required in Section 3.4.2.
- d. Automobile and/or Commercial Truck Insurance as required in Section 3.4.3.
- e. Employee Theft Insurance as required in Section 3.4.4.

3.4.6 The State shall be listed as an additional insured on the policies with the exception of Worker's Compensation Insurance and Professional Liability Insurance. All insurance policies shall be endorsed to include a clause that requires that the insurance carrier provide the Contract Monitor, by certified mail, not less than 45 days' advance notice of any non-renewal, cancellation, or expiration. In the event the Contract Monitor receives a notice of non-renewal, the Contractor shall provide the Contract Monitor with an insurance policy from another carrier at least 30 days prior to the expiration of the insurance policy then in effect. All insurance policies shall be with a company licensed by the State to do business and to provide such policies.

3.4.7 The Contractor shall require that any subcontractors providing services under this Contract obtain and maintain similar levels of insurance and shall provide the Contract Monitor with the same documentation as is required of the Contractor.

3.5 Problem Escalation Procedure

3.5.1 The Contractor must provide and maintain a Problem Escalation Procedure (PEP) for both routine and emergency situations. The PEP must state how the Contractor will address problem situations as they occur during the performance of the Contract, especially problems that are not resolved to the satisfaction of the State within appropriate timeframes.

The Contractor shall provide contact information to the Contract Monitor, as well as to other State personnel, as directed should the Contract Monitor not be available.

3.5.2 The Contractor must provide the PEP no later than ten (10) Business Days after notice of Contract award or after the date of the Notice to Proceed, whichever is earlier. The PEP, including any revisions thereto, must also be provided within ten (10) Business Days after the start of each Contract year and within ten (10) Business Days after any change in circumstance which changes the PEP. The PEP shall detail how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. The PEP shall include:

- The process for establishing the existence of a problem;
- The maximum duration that a problem may remain unresolved at each level in the Contractor's organization before automatically escalating the problem to a higher level for resolution;
- Circumstances in which the escalation will occur in less than the normal timeframe; The nature of feedback on resolution progress, including the frequency of feedback to be provided to the State;
- Identification of, and contact information for, progressively higher levels of personnel in the Contractor's organization who would become involved in resolving a problem;
- Contact information for persons responsible for resolving issues after normal business hours (e.g., evenings, weekends, holidays, etc.) and on an emergency basis; and

- A process for updating and notifying the Contract Monitor of any changes to the PEP.

Nothing in this section shall be construed to limit any rights of the Contract Monitor or the State which may be allowed by the Contract or applicable law.

3.6 Invoicing

3.6.1 General

(a) All invoices for services shall be signed by the Contractor and submitted to the Contract Monitor. All invoices shall include the following information:

- Contractor name;
- Remittance address;
- Federal taxpayer identification number (or if sole proprietorship, the individual's social security number);
- Invoice period;
- Invoice date;
- Invoice number;
- State assigned Contract number;
- State assigned (Blanket) Purchase Order number(s);
- Goods or services provided; and
- Amount due.

Invoices submitted without the required information cannot be processed for payment until the Contractor provides the required information.

(b) The Department reserves the right to reduce or withhold Contract payment in the event the Contractor does not provide the Department with all required deliverables within the time frame specified in the Contract or in the event that the Contractor otherwise materially breaches the terms and conditions of the Contract until such time as the Contractor brings itself into full compliance with the Contract. Any action on the part of the Department, or dispute of action by the Contractor, shall be in accordance with the provisions of Md. Code Ann., State Finance and Procurement Article §§ 15-215 through 15-223 and with COMAR 21.10.02.

3.6.2 Invoice Submission Schedule

The Contractor shall submit invoices in accordance with the following schedule:

An invoice for initial payment of 1/4th of the Contract amount for Contract Year One must be submitted no later than 30 days after the Go-Live Date. For subsequent payments, the Contractor shall bill the Department in quarterly installments on April 15, July 15, October 15, and, beginning the next Contract Year, on January 15. The invoice must be accompanied by the quarterly reports described in Section 3, Item 3.2.10.1. If quarterly reports are not received by October 15, January 15, April 15, July 15, etc., the Contractor will be considered to be out of compliance with the Contract and payment may be withheld. In the event that more than 100 participants are involved in the program, the Board will issue a contract modification to cover the additional participants.

3.7 MBE Reports

If this solicitation includes a MBE Goal (see Section 1.33), the Contractor and its MBE subcontractors shall provide the following MBE Monthly Reports based upon the commitment to the goal:

- (a) **Attachment D-4**, the MBE Participation Prime Contractor Paid/Unpaid MBE Invoice Report by the 10th of the month following the reporting period to the Contract Monitor and the MBE Liaison Officer.
- (b) **Attachment D-5**, the MBE Participation Subcontractor Paid/Unpaid MBE Invoice Report by the 10th of the month following the reporting period to the Contract Monitor and the MBE Liaison Officer.

3.8 VSBE Reports

If this solicitation includes a VSBE Goal (see Section 1.41), the Contractor and its VSBE subcontractors shall provide the following VSBE Monthly Reports based upon the commitment to the goal:

- (a) **Attachment M-3**, the VSBE Participation Prime Contractor Paid/Unpaid VSBE Invoice Report by the 10th of the month following the reporting period to the Contract Monitor and the VSBE Liaison Officer.
- (b) **Attachment M-4**, the VSBE Participation Subcontractor Paid/Unpaid VSBE Invoice Report by the 10th of the month following the reporting period to the Contract Monitor and the VSBE Liaison Officer.

3.9 SOC 2 Type II Audit Report

A SOC 2 Type II Report is not a Contractor requirement for this Contract.

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SECTION 4 – PROPOSAL FORMAT

4.1 Two Part Submission

Contractors shall submit Proposals in separate volumes:

- Volume I – TECHNICAL PROPOSAL
- Volume II – FINANCIAL PROPOSAL

4.2 Proposals

4.2.1 Volume I – Technical Proposal, and Volume II – Financial Proposal shall be sealed separately from one another. It is preferred, but not required, that the name, email address, and telephone number of the Contractor be included on the outside of the packaging for each volume. Each Volume shall contain an unbound original, so identified, and six (6) copies. Unless the resulting package will be too unwieldy, the State’s preference is for the two (2) sealed Volumes to be submitted together in a single package including a label bearing:

- The RFP title and number,
- Name and address of the Contractor, and
- Closing date and time for receipt of Proposals

To the Procurement Coordinator (see Section 1.5) prior to the date and time for receipt of Proposals (see Section 1.11 “Proposals Due (Closing) Date and Time”).

4.2.2 An electronic version (CD or DVD) of the Technical Proposal in Microsoft Word format must be enclosed with the original Technical Proposal. An electronic version (CD or DVD) of the Financial Proposal in Microsoft Word or Microsoft Excel format must be enclosed with the original Financial Proposal. CD/DVDs must be labeled on the outside with the RFP title and number, name of the Contractor, and volume number. CD/DVDs must be packaged with the original copy of the appropriate Proposal (Technical or Financial).

4.2.3 A second electronic version of Volume I and Volume II in searchable Adobe .pdf format shall be submitted on CD or DVD for Public Information Act (PIA) requests. This copy shall be redacted so that confidential and/or proprietary information has been removed (see Section 1.14 “Public Information Act Notice”).

4.2.4 All pages of both proposal volumes shall be consecutively numbered from beginning (Page 1) to end (Page “X”).

4.2.5 Proposals and any modifications to Proposals will be shown only to State employees, members of the Evaluation Committee, or other persons deemed by the Department to have a legitimate interest in them.

4.3 Delivery

Contractors may either mail or hand-deliver Proposals.

4.3.1 For U.S. Postal Service deliveries, any Proposal that has been received at the appropriate mailroom, or typical place of mail receipt, for the respective procuring unit by the time and date listed in the RFP will be deemed to be timely. If a Contractor chooses to use the U.S. Postal Service for delivery, the Department recommends that it use Express Mail, Priority Mail, or Certified Mail only as these are the only forms for which both the date and time of receipt can be verified by the Department. A Contractor using first class mail will not be able to prove a timely delivery at the mailroom, and it could take several days for an item sent by first class mail to make its way by normal internal mail to the procuring unit.

- 4.3.2 Hand-delivery includes delivery by commercial carrier acting as agent for the Contractor. For any type of direct (non-mail) delivery, Contractors are advised to secure a dated, signed, and time-stamped (or otherwise indicated) receipt of delivery.
- 4.3.3 After receipt, a Register of Proposals will be prepared that identifies each Contractor. The Register of Proposals will be open to inspection only after the Procurement Officer makes a determination recommending the award of the Contract.

4.4 Volume I – Technical Proposal

Note: No pricing information is to be included in the Technical Proposal (Volume 1). Pricing information is to be included only in the Financial Proposal (Volume II).

4.4.1 Format of Technical Proposal

Inside a sealed package described in Section 4.2 “Proposals,” the unbound original, six (6) copies, and the electronic version shall be provided. The RFP sections are numbered for ease of reference. Sections 4.4.2 – 4.4.22 set forth the order of information to be provided in the Technical Proposal, e.g., Section 4.4.3 “Title and Table of Contents,” Section 4.4.4 “Claim of Confidentiality,” Section 4.4.5 “Transmittal Letter,” Section 4.4.6 “Executive Summary,” etc. In addition to the instructions below, responses in the Contractor’s Technical Proposal should reference the organization and numbering of Sections in the RFP (ex. “Section 3.2.1 Response . . . ; “Section 3.2.2 Response . . .,” etc.). This Proposal organization will allow State officials and the Evaluation Committee (see RFP Section 5.1) to “map” Contractor responses directly to RFP requirements by Section number and will aid in the evaluation process.

4.4.2 The Technical Proposal shall include the following documents and information in the order specified as follows: Each section of the Technical Proposal shall be separated by a TAB as detailed below:

4.4.3 Title Page and Table of Contents (Submit under TAB A)

The Technical Proposal should begin with a Title Page bearing the name and address of the Contractor and the name and number of this RFP. A Table of Contents shall follow the Title Page for the Technical Proposal, organized by section, subsection, and page number.

4.4.4 Claim of Confidentiality (If applicable, submit under TAB A-1)

Any information which is claimed to be confidential is to be noted by reference and included after the Title Page and before the Table of Contents, and if applicable, also in the Contractor’s Financial Proposal. An explanation for each claim of confidentiality shall be included (see Section 1.14 “Public Information Act Notice”). The entire Proposal cannot be given a blanket confidentiality designation. Any confidentiality designation must apply to specific sections, pages, or portions of pages of the Proposal.

4.4.5 Transmittal Letter (Submit under TAB B)

A Transmittal Letter shall accompany the Technical Proposal. The purpose of this letter is to transmit the Proposal and acknowledge the receipt of any addenda. The Transmittal Letter should be brief and signed by an individual who is authorized to commit the Contractor to the services and requirements as stated in this RFP. The Transmittal Letter should include the following:

- Name and address of the Contractor;
- Name, title, e-mail address, and telephone number of primary contact for the Contractor;
- Solicitation Title and Solicitation Number that the Proposal is in response to;

- Signature, typed name, and title of an individual authorized to commit the Contractor to its Proposal;
- Federal Employer Identification Number (FEIN) of the Contractor, or if a single individual, that individual's Social Security Number (SSN);
- Contractor's eMM number;
- Contractor's MBE certification number (if applicable);
- Acceptance of all State RFP and Contract terms and conditions (see Section 1.24); if any exceptions are taken, they are to be noted in the Executive Summary (see Section 4.4.2.4); and
- Acknowledgement of all addenda to this RFP.

4.4.6 Executive Summary (Submit under TAB C)

The Contractor shall condense and highlight the contents of the Technical Proposal in a separate section titled "Executive Summary." The Summary should identify the Service Category(ies) and Region(s) for which the Contractor is proposing to provide services (if applicable). The Summary shall also identify any exceptions the Contractor has taken to the requirements of this RFP, the Contract (Attachment A), or any other attachments. Exceptions to terms and conditions may result in having the Proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award.

If the Contractor has taken no exceptions to the requirements of this RFP, the Executive Summary shall so state.

4.4.7 Minimum Qualifications Documentation (If applicable, Submit under TAB D)

The Contractor shall submit any Minimum Qualifications documentation that may be required, as set forth in Section 2 "Contractor Minimum Qualifications."

4.4.8 Contractor Technical Response to RFP Requirements and Proposed Work Plan (Submit under TAB E)

- a. The Contractor shall address each Scope of Work requirement (Section 3.2) in its Technical Proposal and describe how its proposed services, including the services of any proposed subcontractor(s), will meet or exceed the requirement(s). If the State is seeking Contractor agreement to any requirement(s), the Contractor shall state its agreement or disagreement. Any paragraph in the Technical Proposal that responds to a Scope of Work (Section 3.2) requirement shall include an explanation of how the work will be done. Any exception to a requirement, term, or condition may result in having the Proposal classified as not reasonably susceptible of being selected for award or the Contractor deemed not responsible.
- b. The Contractor shall give a definitive description of the proposed plan to meet the requirements of the RFP, i.e., a Work Plan. The Work Plan shall include the specific methodology and techniques to be used by the Contractor in providing the required services as outlined in RFP Section 3, Scope of Work. The description shall include an outline of the overall management concepts employed by the Contractor and a project management plan, including project control mechanisms and overall timelines. Project deadlines considered contract deliverables must be recognized in the Work Plan.
- c. The Contractor shall identify the location(s) from which it proposes to provide the services, including, if applicable, any current facilities that it operates, and any required construction to satisfy the State's requirements as outlined in this RFP.
- d. The Contractor must provide a draft Problem Escalation Procedure (PEP) that includes, at a minimum, titles of individuals to be contacted by the Department's Contract Monitor should problems arise under the Contract and explain how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. Final procedures must be submitted as indicated in RFP Section 3.5.

- e. Describe how and by whom evaluations and preparation of Rehabilitation Plans will be performed. If Contractor plans to use forms other than those attached to this document, drafts of the Rehabilitation Agreement and the Rehabilitation Plan must be attached to the technical proposal.
- f. Rehabilitation Program participants need access to providers or facilities where they reside or work. The Contractor shall describe how it proposes to provide access to assessment, treatment and monitoring, including what criteria it will use to meet the geographic access to participants, and how it will conduct or have conducted full assessments on individuals who live more than 50 miles from a central office.
- g. Discuss how the Contractor proposes to address the problem that a participant cannot pay for necessary treatment. Participants in the Rehabilitation Program are generally responsible for paying for costs of required consultations, treatment, or laboratory tests associated with alcohol/drug testing. It is anticipated that the costs of the initial evaluation as well as continued monitoring will be Contract costs. If the Contractor wishes to use Contract funds to purchase treatment or laboratory tests for participants who cannot pay for treatment, the Contractor must include a plan explaining how need will be assessed and requiring reevaluating a participant's financial need at least annually.

4.4.9 Referral Resources

Include a list of referral resources which will be used for evaluation and or treatment, with annotations indicating programs or facilities where the Contractor has previously placed clients. Please include at least 3 inpatient treatment centers and 3 laboratories distributed around Maryland which can accommodate random observed specimen collections for chemical screens.

4.4.210 Include the proposed plan to:

- a. Update the individual Rehabilitation Plan for each participant.
- b. Explain when and how treatment reviews and updates to the Rehabilitation Plan will be accomplished.
- c. Recovery monitoring, including chemical screens, worksite monitoring and other means of monitoring a participant's compliance with the individual Rehabilitation Plan description.

4.4.11 The Contractor shall discuss the plan for monitoring the participant's compliance with the Rehabilitation Agreement and the Rehabilitation Plan including a method of identifying worksite monitors. Include examples of forms and protocols for worksite monitors, obtaining reports from professionals treating participants, etc.

4.4.12 The Contractor shall submit its protocol for observed specimen collection for chemical screens of participants with substance abuse problems. This shall address frequency, how the participant will be notified, how long the participant has to report for specimen collection, chain of custody of samples and other items relevant to a system of random observed chemical screens.

4.4.13 The Contractor shall discuss the plan for monitoring participants with only physical, emotional and mental conditions, including medication monitoring.

4.4.14 Procedures for reporting noncompliance, terminations of the Rehabilitation Agreements for cause, and for licensees in the Rehabilitation Program who pose a danger to self and others.

4.4.15 Explain who will be responsible for reporting noncompliance to the Board.

4.4.16 Quarterly and Annual Reports to the Board

- a. The Contractor must propose formats for the quarterly and annual reports.

4.4.17 Contractor Transition Plans at Start/End of Contract

- a. Explain how transitions will occur.

4.5 Experience and Qualifications of Proposed Staff (Submit under TAB F)

- 4.5.1 Provide qualifications including professional license/certificate numbers for all proposed program staff members. Explain how the program would operate based on the number of proposed staff.
- 4.5.2 The Contractor must provide each staff person's experience and qualifications as described in 3.2.18 for the Maryland Rehabilitation Program. The Contractor's proposal shall include the resume, job description and copies of professional licenses, for these positions.
- 4.5.3 The Contractor shall identify the number and types of staff proposed to be utilized under the Contract.
- 4.5.4 The Contractor shall describe in detail how the proposed staff person's experience and qualifications relate to their specific responsibilities, including any staff of proposed subcontractor(s), as detailed in the Work Plan. The Contractor shall include individual resumes for the key personnel, including key personnel for any proposed subcontractor(s), who are to be assigned to the project if the Contractor is awarded the Contract. Each resume should include the amount of experience the individual has had relative to the Scope of Work set forth in this solicitation. Letters of intended commitment to work on the project, including letters from any proposed subcontractor(s), shall be included in this section.
- 4.5.5 The Contractor shall provide an Organizational Chart outlining personnel and their related duties. The Contractor shall include job titles and the percentage of time each individual will spend on his/her assigned tasks. Contractors using job titles other than those commonly used by industry standards must provide a crosswalk reference document.

4.6 Contractor Qualifications and Capabilities (Submit under TAB G)

- 4.6.1 The Contractor shall describe its experience in providing treatment and rehabilitation services and monitoring. The Contractor shall list the organizations, requiring a similar scope of work that previously have used the services of the Contractor and indicate the organizations that have used the services within the last three years and include the name and title of the contact person for the organizations.
- 4.6.2 The Contractor shall include information on past experience with similar projects and/or services. The Contractor shall describe how its organization can meet the requirements of this RFP and shall also include the following information:
 - a. The number of years the Contractor has provided the similar services;
 - b. The number of clients/customers and geographic locations that the Contractor currently serves;
 - c. The names and titles of headquarters or regional management personnel who may be involved with supervising the services to be performed under this Contract;
 - d. The Contractor's process for resolving billing errors; and
 - e. An organizational chart that identifies the complete structure of the Contractor including any parent company, headquarters, regional offices, and subsidiaries of the Contractor.

4.7 References (Submit under TAB H)

4.7.1 At least three (3) references are requested from customers who are capable of documenting the Contractor's ability to provide the services specified in this RFP. References used to meet any Contractor Minimum Qualifications (see Section 2) may be used to meet this request. Each reference shall be from a client for whom the Contractor has provided services within the past five (5) years and shall include the following information:

- a. Name of client organization;
- b. Name, title, telephone number, and e-mail address, if available, of point of contact for client organization; and
- c. Value, type, duration, and description of services provided.

The Department reserves the right to request additional references or utilize references not provided by a Contractor.

4.8 List of Current or Prior State Contracts (Submit under TAB I)

Provide a list of all contracts with any entity of the State of Maryland for which the Contractor is currently performing services or for which services have been completed within the last five (5) years. For each identified contract, the Contractor is to provide:

- a. The State contracting entity;
- b. A brief description of the services/goods provided;
- c. The dollar value of the contract;
- d. The term of the contract;
- e. The State employee contact person (name, title, telephone number, and, if possible, e-mail address); and
- f. Whether the contract was terminated before the end of the term specified in the original contract, including whether any available renewal option was not exercised.

Information obtained regarding the Contractor's level of performance on State contracts will be used by the Procurement Officer to determine the responsibility of the Contractor and considered as part of the experience and past performance evaluation criteria of the RFP.

4.9 Financial Capability (Submit under TAB J)

a. A Contractor must include in its Proposal a commonly-accepted method to prove its fiscal integrity. If available the Contractor shall include Financial Statements, preferably a Profit and Loss (P&L) statement and a Balance Sheet, for the last two (2) years (independently audited preferred).

b. The Contractor shall provide proof of Fiscal Integrity that includes the most current annual report. The Contractor shall provide the most current annual report to stockholders and/or any documentation that indicates corporate and/or other financial resources that will permit the Contractor to fulfill the terms of this RFP. This documentation may include but not limited to, one or all of the following:

- Dunn and Bradstreet Ratings
- Audited Financial Statements
- Line(s) of Credit
- Successful financial track record
- Adequate Working Capital

4.10 Certificate of Insurance (Submit under TAB K)

The Contractor shall provide a copy of its current certificate of insurance showing the types and limits of insurance in effect as of the Proposal submission date. The current insurance types and limits do not have to be the same as described in Section 3.4. See Section 5.6 for the required insurance certificate submission for the recommended Contractor.

4.11 Subcontractors (Submit under TAB L)

The Contractor shall provide a complete list of all subcontractors that will work on the Contract if the Contractor receives an award, including those utilized in meeting the MBE and/or VSBE subcontracting goal, if applicable. This list shall include a full description of the duties each subcontractor will perform and why/how each subcontractor was deemed the most qualified for this project. .

4.12 Legal Action Summary (Submit under TAB M)

This summary shall include:

- a. A statement as to whether there are any outstanding legal actions or potential claims against the Contractor and a brief description of any action;
- b. A brief description of any settled or closed legal actions or claims against the Contractor over the past five (5) years;
- c. A description of any judgments against the Contractor within the past five (5) years, including the case name, court case docket number, and what the final ruling or determination was from the court; and
- d. In instances where litigation is on-going and the Contractor has been directed not to disclose information by the court, provide the name of the judge and location of the court.

4.13 Economic Benefit Factors (Submit under TAB N)

The Contractor shall submit with its Proposal a narrative describing benefits that will accrue to the Maryland economy as a direct or indirect result of its performance of this Contract. Proposals will be evaluated to assess the benefit to Maryland's economy specifically offered. See COMAR 21.05.03.03A (3).

Proposals that identify specific benefits as being contractually enforceable commitments will be rated more favorably than Proposals that do not identify specific benefits as contractual commitments, all other factors being equal.

Contractors shall identify any performance guarantees that will be enforceable by the State if the full level of promised benefit is not achieved during the Contract term.

As applicable, for the full duration of the Contract, including any renewal period, or until the commitment is satisfied, the Contractor shall provide to the Procurement Officer or other designated agency personnel reports of the actual attainment of each benefit listed in response to this section. These benefit attainment reports shall be provided quarterly, unless elsewhere in these specifications a different reporting frequency is stated.

Please note that in responding to this section, the following do not generally constitute economic benefits to be derived from this Contract:

- a. generic statements that the State will benefit from the Contractor's superior performance under the Contract;

- b. descriptions of the number of Contractor employees located in Maryland other than those that will be performing work under this Contract; or
- c. tax revenues from Maryland based employees or locations, other than those that will be performing, or used to perform, work under this Contract.

Discussion of Maryland-based employees or locations may be appropriate if the Contractor makes some projection or guarantee of increased or retained presence based upon being awarded this Contract.

Examples of economic benefits to be derived from a contract may include any of the following. For each factor identified below, identify the specific benefit and contractual commitments and provide a breakdown of expenditures in that category:

- The Contract dollars to be recycled into Maryland’s economy in support of the Contract, through the use of Maryland subcontractors, suppliers and joint venture partners. Do not include actual fees or rates paid to subcontractors or information from your Financial Proposal;
- The number and types of jobs for Maryland residents resulting from the Contract. Indicate job classifications, number of employees in each classification and the aggregate payroll to which the Contractor has committed, including contractual commitments at both prime and, if applicable, subcontract levels. If no new positions or subcontracts are anticipated as a result of this Contract, so state explicitly;
- Tax revenues to be generated for Maryland and its political subdivisions as a result of the Contract. Indicate tax category (sales taxes, payroll taxes, inventory taxes and estimated personal income taxes for new employees). Provide a forecast of the total tax revenues resulting from the Contract;
- Subcontract dollars committed to Maryland small businesses and MBEs; and
- Other benefits to the Maryland economy which the Contractor promises will result from awarding the Contract to the Contractor, including contractual commitments. Describe the benefit, its value to the Maryland economy, and how it will result from, or because of the Contract award. Contractors may commit to benefits that are not directly attributable to the Contract, but for which the Contract award may serve as a catalyst or impetus.

4.14 Additional Required Technical Submissions (Submit under TAB O)

4.14.1 The following documents shall be completed, signed, and included in the Technical Proposal, under TAB O that follows the material submitted in response to Section 4.4.2.

- a. Completed Bid/Proposal Affidavit (**Attachment B**).
- b. Completed Maryland Living Wage Requirements Affidavit of Agreement (**Attachment G-1**).
- c. Business Associate Agreement, Appendix G of Part VI

4.14.2 ***If Required**, the following documents shall be completed, signed, and included in the Technical Proposal, under TAB O that follows the material submitted in response to Section 4.4.2. *See appropriate RFP Section to determine whether the Attachment is required for this procurement:

- a. Completed MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D1**) *see **Section 1.33**. This attachment must be provided in a separately sealed envelope within the main Technical Proposal package/envelope.
- b. Completed Federal Funds Attachment (**Attachment H**) *see **Section 1.35**.
- c. Completed Conflict of Interest Affidavit and Disclosure (**Attachment I**) *see **Section 1.36**.
- d. Completed Mercury Affidavit (**Attachment L**) *see **Section 1.40**.
- e. Completed Veteran-Owned Small Business Enterprise (VSBE) Utilization Affidavit and Subcontractor Participation Schedule. (**Attachment M-1**) *see **Section 1.41**.

- f. Completed Location of the Performance of Services Disclosure (**Attachment N**) *see **Section 1.42**.

4.15 Volume II – Financial Proposal

Under separate sealed cover from the Technical Proposal and clearly identified in the format identified in Section 4.2 “Proposals,” the Contractor shall submit an original unbound copy, six (6) copies, and an electronic version in Microsoft Word or Microsoft Excel of the Financial Proposal. The Financial Proposal shall contain all price information in the format specified in **Attachment F**. The Contractor shall complete the Financial Proposal Form only as provided in the Financial Proposal Instructions and the Financial Proposal Form itself.

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SECTION 5 – EVALUATION COMMITTEE, EVALUATION CRITERIA, AND SELECTION PROCEDURE

5.1 Evaluation Committee

Evaluation of Proposals will be performed in accordance with COMAR 21.05.03 by a committee established for that purpose and based on the evaluation criteria set forth below. The Evaluation Committee will review Proposals, participate in Contractor oral presentations and discussions, and provide input to the Procurement Officer. The Department reserves the right to utilize the services of individuals outside of the established Evaluation Committee for advice and assistance, as deemed appropriate.

5.2 Technical Proposal Evaluation Criteria

The criteria to be used to evaluate each Technical Proposal are listed below in descending order of importance. Unless stated otherwise, any sub criteria within each criterion have equal weight.

Evaluation Criteria

The evaluation criteria set forth below are arranged in descending order of importance.

5.2.11 Contractor's Technical Response to RFP Requirements and Work Plan

The State prefers a Contractor's response to work requirements in the RFP that illustrates a comprehensive understanding of work requirements and mastery of the subject matter, including an explanation of how the work will be done. Proposals which include limited responses to work requirements such as "concur" or "will comply" will receive a lower ranking than those Proposals that demonstrate an understanding of the work requirements and include plans to meet or exceed them. In particular, the following factors will be evaluated:

5.2.11.1 Network of referral resources: preference for Contractors with established relationships to treatment centers, laboratories, etc. and a Maryland network;

5.2.11.2 Contractor's plans for intake, evaluation of licensees, developing and updating individual Rehabilitation Plans, process and reporting in regard to individuals who do not require rehabilitation services, monitoring, reporting non-compliance to the Board, reporting those individuals whom the Rehabilitation Program terminates for cause, and those who pose a danger to self and others;

5.2.11.3 The extent to which the Contractor has offices in the State of Maryland.

5.2.11.4 Contractor's plan for transition at the beginning and end of the contract; and

5.2.11.5 Contractor's plan for addressing the issue of participants who are unable to pay for evaluation and treatment.

5.2.12 Experience and Qualifications of Proposed Staff (See RFP §4.5). In particular, the following factors will be evaluated:

5.2.12.1 Contractor's proposed staffing pattern, diversity, and experience; credentials of the Medical Director

for the Rehabilitation Program, licensure and certifications of other staff, percentage of staff time to be spent on services for the Rehabilitation Program.

5.2.13 Contractor Qualifications and Capabilities, including proposed Subcontractors (See RFP 4.6) In particular, the following will be evaluated:

5.2.13.1 Contractor's experience in providing rehabilitation programs:

- a. References from organizations that have previously used the services of the Contractor, and references from organizations that have used the services of the Contractor within the last three (3) years for a similar scope of work.
- b. Preference to Contractors with experience in monitoring physicians or health care providers,
- c. Length of time Contractor has been performing services.
- d. Actual performance data showing numbers of contracts signed sources of referrals, types of problems, contract completion rates, relapse rates, medical board referrals, program response times and successful and unsuccessful release rates.
- e. Contractor's previous reporting requirements to federal or state courts, or other entities in regards to quarterly and annual reports and relapse reporting.

5.2.13.2 Financial viability of the Contractor

5.2.14 Economic Benefit to State of Maryland (See RFP § 4.13)

5.3 Financial Proposal Evaluation Criteria

All Qualified Contractors (see Section 5.5.2.4) will be ranked from the lowest (most advantageous) to the highest (least advantageous) price based on the Total Proposal Price within the stated guidelines set forth in this RFP and as submitted on **Attachment F** - Financial Proposal Form.

5.4 Reciprocal Preference

Although Maryland law does not authorize procuring agencies to favor resident Contractors in awarding procurement contracts, many other states do grant their resident businesses preferences over Maryland contractors. Therefore, COMAR 21.05.01.04 requires that procuring units apply a reciprocal preference under the following conditions:

- The most advantageous offer is from a responsible Contractor whose headquarters, principal base of operations, or principal site that will primarily provide the services required under this RFP is in another state.
- The other state gives a preference to its resident businesses through law, policy, or practice; and
- The preference does not conflict with a Federal law or grant affecting the procurement Contract.

The preference given shall be identical to the preference that the other state, through law, policy, or practice gives to its resident businesses.

5.5 Selection Procedures

5.5.1 General

The Contract will be awarded in accordance with the Competitive Sealed Proposals (CSP) method found at COMAR 21.05.03. The Competitive Sealed Proposals method allows for the conducting of discussions and the revision of Proposals during these discussions. Therefore, the State may conduct discussions with all Contractors that have submitted Proposals that are determined to be reasonably susceptible of being selected for contract award or potentially so. However, the State reserves the right to make an award without holding discussions.

In either case (i.e., with or without discussions), the State may determine an Contractor to be not responsible and/or an Contractor's Proposal to be not reasonably susceptible of being selected for award at any time after the initial closing date for receipt of Proposals and prior to Contract award. If the State finds an Contractor to be not responsible and/or an Contractor's Technical Proposal to be not reasonably susceptible of being selected for award, that Contractor's Financial Proposal will be returned if the Financial Proposal is unopened at the time of the determination.

5.5.2 Selection Process Sequence

- 5.5.2.1 A determination is made that the MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1**) is included and is properly completed, if there is a MBE goal. In addition, a determination is made that the Veteran-Owned Small Business Enterprise (VSBE) Utilization Affidavit and Subcontractor Participation Schedule (**Attachment M-1**) is included and is properly completed, if there is a VSBE goal.
- 5.5.2.2 Technical Proposals are evaluated for technical merit and ranked. During this review, oral presentations and discussions may be held. The purpose of such discussions will be to assure a full understanding of the State's requirements and the Contractor's ability to perform the services, as well as to facilitate arrival at a Contract that is most advantageous to the State. Contractors will be contacted by the State as soon as any discussions are scheduled.
- 5.5.2.3 Contractors must confirm in writing any substantive oral clarifications of, or changes in, their Technical Proposals made in the course of discussions. Any such written clarifications or changes then become part of the Contractor's Technical Proposal. Technical Proposals are given a final review and ranked.
- 5.5.2.4 The Financial Proposal of each Qualified Contractor (a responsible Contractor determined to have submitted an acceptable Proposal) will be evaluated and ranked separately from the Technical evaluation. After a review of the Financial Proposals of Qualified Contractors, the Evaluation Committee or Procurement Officer may again conduct discussions to further evaluate the Contractor's entire Proposal.
- 5.5.2.5 When in the best interest of the State, the Procurement Officer may permit Qualified Contractors to revise their initial Proposals and submit, in writing, Best and Final Offers (BAFOs). The State may make an award without issuing a request for a BAFO.

5.5.3 Award Determination

Upon completion of the Technical Proposal and Financial Proposal evaluations and rankings, each Contractor will receive an overall ranking. The Procurement Officer will recommend award of the Contract to the responsible Contractor that submitted the Proposal determined to be the most advantageous to the State. In making this most advantageous Proposal determination, technical factors will receive equal weight with financial factors.

5.6 Documents Required upon Notice of Recommendation for Contract Award

Upon receipt of a Notification of Recommendation for Contract Award, the following documents shall be completed, signed if applicable with original signatures, and submitted by the recommended awardee within five (5) Business Days, unless noted otherwise. Submit three (3) copies of each of the following documents:

- a. Contract (**Attachment A**),
- b. Contract Affidavit (**Attachment C**),
- c. MBE **Attachments D-2 and D-3**, within ten (10) Working Days, if applicable; *see **Section 1.33**,
- d. MBE Waiver Justification within ten (10) Working Days, usually including **Attachment D-6**, if a waiver has been requested (if applicable; *see **Section 1.33**),
- e. Non-Disclosure Agreement (**Attachment J**), if applicable; *see **Section 1.37**,
- g. HIPAA Business Associate Agreement (**Attachment K**), if applicable; *see **Section 1.38**,
- h. VSBE **Attachments M-2 and M-3**, if applicable *see **Section 1.41**,
- i. DHR Hiring Agreement, **Attachment O**, if applicable *see **Section 1.43**, and
- j. copy of a current Certificate of Insurance with the prescribed limits set forth in Section 3.4 “Insurance Requirements,” listing the State as an additional insured, if applicable; *see **Section 3.4**.

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RFP ATTACHMENTS

ATTACHMENT A – Contract

This is the sample contract used by the Department. It is provided with the RFP for informational purposes and is not required to be submitted at Proposal submission time. Upon notification of recommendation for award, a completed contract will be sent to the recommended awardee for signature. The recommended awardee must return to the Procurement Officer three (3) executed copies of the Contract within five (5) Business Days after receipt. Upon Contract award, a fully-executed copy will be sent to the Contractor.

ATTACHMENT B – Bid/Proposal Affidavit

This Attachment must be completed and submitted with the Technical Proposal.

ATTACHMENT C – Contract Affidavit

This Attachment must be completed and submitted by the recommended awardee to the Procurement Officer within five (5) Business Days of receiving notification of recommendation for award.

ATTACHMENT D – Minority Business Enterprise Forms

If required (see Section 1.33), these Attachments include the MBE subcontracting goal statement, instructions, and MBE Attachments D-1 through D-6. Attachment D-1 must be properly completed and submitted with the Contractor's Technical Proposal or the Proposal will be deemed not reasonably susceptible of being selected for award and rejected. Within 10 Working Days of receiving notification of recommendation for Contract award, the Contractor must submit Attachments D-2 and D-3 and, if the Contractor has requested a waiver of the MBE goal, usually Attachment D-6.

ATTACHMENT E – Pre-Proposal Conference Response Form

It is requested that this form be completed and submitted as described in Section 1.7 by those potential Contractors that plan on attending the Pre-Proposal Conference.

ATTACHMENT F – Financial Proposal Instructions and Form

The Financial Proposal Form must be completed and submitted in the Financial Proposal package.

ATTACHMENT G – Maryland Living Wage Requirements for Service Contracts and Affidavit of Agreement

Attachment G-1 Living Wage Affidavit of Agreement must be completed and submitted with the Technical Proposal.

ATTACHMENT H – Federal Funds Attachment

If required (see Section 1.35), these Attachments must be completed and submitted with the Technical Proposal as instructed in the Attachments.

ATTACHMENT I – Conflict of Interest Affidavit and Disclosure

If required (see Section 1.36), this Attachment must be completed and submitted with the Technical Proposal.

ATTACHMENT J – Non-Disclosure Agreement

If required (see Section 1.37), this Attachment must be completed and submitted within five (5) Business Days of receiving notification of recommendation for award. However, to expedite processing, it is suggested that this document be completed and submitted with the Technical Proposal.

ATTACHMENT K – HIPAA Business Associate Agreement

If required (see Section 1.38), this Attachment is to be completed and submitted within five (5) Business Days of receiving notification of recommendation for award. However, to expedite processing, it is suggested that this document be completed and submitted with the Technical Proposal.

ATTACHMENT L – Mercury Affidavit

If required (see Section 1.40), this Attachment must be completed and submitted with the Technical Proposal.

ATTACHMENT M – Veteran-Owned Small Business Enterprise Forms

If required (see Section 1.41), these Attachments include the VSBE Attachments M-1 through M-4. Attachment M-1 must be completed and submitted with the Technical Proposal. Attachment M-2 is required to be submitted within ten (10) Business Days of receiving notification of recommendation for award.

ATTACHMENT N – Location of the Performance of Services Disclosure

If required (see Section 1.42), this Attachment must be completed and submitted with the Technical Proposal.

ATTACHMENT O – Department of Human Resources (DHR) Hiring Agreement

If required (see Section 1.43), this Attachment is to be completed and submitted within five (5) Business Days of receiving notification of recommendation for award.

ATTACHMENT P – Consent to Exchange Confidential Information

ATTACHMENT Q – Rehabilitation Agreement with the “Board”

ATTACHMENT R – Consent to Exchange Confidentiality Information

ATTACHMENT S – Consent To Release Confidential Information To and Received from the “Board”

ATTACHMENT A – CONTRACT

Maryland Board of Physicians Rehabilitation Program OPASS 15-14125

THIS CONTRACT (the “Contract”) is made this (“Xth”) day of (month), (year) by and between (Contractor’s name) and the STATE OF MARYLAND, acting through the DEPARTMENT OF HEALTH AND MENTAL HYGIENE, OFFICE OF PROCUREMENT AND SUPPORT SERVICES.

In consideration of the promises and the covenants herein contained, the parties agree as follows:

1. Definitions

In this Contract, the following words have the meanings indicated:

- 1.1 “COMAR” means Code of Maryland Regulations.
- 1.2 “Contract Monitor” means the Department employee identified in Section 1.6 of the RFP as the Contract Monitor.
- 1.3 “Contractor” means (Contractor’s name) whose principal business address is (Contractor’s primary address) and whose principal office in Maryland is (Contractor’s local address).
- 1.4 “Department” means the Maryland Department of Health and Mental Hygiene and any of its Agencies, Offices, Administrations, Facilities, or Commissions.
- 1.5 “Financial Proposal” means the Contractor’s Financial Proposal dated (Financial Proposal date).
- 1.6 “Procurement Officer” means the Department employee identified in Section 1.5 of the RFP as the Procurement Officer.
- 1.7 “RFP” means the Request for Proposals for Maryland Board of Physicians Rehabilitation Program Solicitation # DHMH OPASS 15-14125 and any addenda thereto issued in writing by the State.
- 1.8 “State” means the State of Maryland.
- 1.9 “Technical Proposal” means the Contractor’s Technical Proposal dated (Technical Proposal date).

2. Scope of Contract

- 2.1 The Contractor shall provide deliverables, programs, goods, and services specific to the Contract awarded in accordance with Exhibits A-C listed in this section and incorporated as part of this Contract. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall govern. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

Exhibit A – The RFP

Exhibit B – State Contract Affidavit, executed by the Contractor and dated (date of Attachment C)

Exhibit C – The Proposal (Technical and Financial)

- 2.2 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract or the RFP. No other order, statement, or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor’s cost of, or the time required for, the performance of any part of the work, whether

or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

- 2.3 While the Procurement Officer may, at any time, by written change order, make unilateral changes in the work within the general scope of the Contract as provided in Section 2.2 above, the Contract may be modified by mutual agreement of the parties, provided: (a) the modification is made in writing; (b) all parties sign the modification; and (c) all approvals by the required agencies as described in COMAR Title 21, are obtained.

3. Period of Performance.

- 3.1 The term of this Contract begins on the date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required. The Contractor shall provide services under this Contract as of the Go-Live date contained in the written Notice to Proceed. From this Go-Live date, the Contract shall be for a period of approximately three years beginning November 1, 2014 and ending on October 31, 2017.
- 3.2 Audit, confidentiality, document retention, and indemnification obligations under this Contract shall survive expiration or termination of the Contract.

4. Consideration and Payment

- 4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay the Contractor in accordance with the terms of this Contract and at the prices quoted on the Financial Proposal Form (Attachment F). Unless properly modified (see above Section 2.3), payment to the Contractor pursuant to this Contract shall not exceed \$ **(Not-to-Exceed amount)**.

Contractor shall notify the Contract Monitor, in writing, at least sixty (60) days before payments reach the above specified amount. After notification by the Contractor, if the State fails to increase the Contract amount, the Contractor shall have no obligation to perform under this Contract after payments reach the stated amount; provided, however, that, prior to the stated amount being reached, the Contractor shall: (a) promptly consult with the State and work in good faith to establish a plan of action to assure that every reasonable effort has been undertaken by the Contractor to complete State-defined critical work in progress prior to the date the stated amount will be reached; and (b) when applicable secure databases, systems, platforms, and/or applications on which the Contractor is working so that no damage or vulnerabilities to any of the same will exist due to the existence of any such unfinished work.

- 4.2 Payments to the Contractor shall be made no later than thirty (30) days after the Department's receipt of a proper invoice for services provided by the Contractor, acceptance by the Department of services provided by the Contractor, and pursuant to the conditions outlined in Section 4 of this Contract. Each invoice for services rendered must include the Contractor's Federal Tax Identification or Social Security Number for a Contractor who is an individual which is **(Contractor's FEIN or SSN)**. Charges for late payment of invoices other than as prescribed at Md. Code Ann., State Finance and Procurement Article, §15-104 as from time-to-time amended, are prohibited. Invoices shall be submitted to the Contract Monitor. Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.
- 4.3 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any

invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.

4.4 Payment of an invoice by the Department is not evidence that services were rendered as required under this Contract.

4.4 Contractor's eMarylandMarketplace vendor ID number is (Contractor's eMM number).

5. Rights to Records

5.1 The Contractor agrees that all documents and materials including, but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations, and data prepared by the Contractor for purposes of this Contract shall be the sole property of the State and shall be available to the State at any time. The State shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.

5.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a deliverable under this Contract, and services performed under this Contract shall be "works made for hire" as that term is interpreted under U.S. copyright law. To the extent that any products created as a deliverable under this Contract are not works made for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.

5.3 The Contractor shall report to the Contract Monitor, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.

5.4 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

6. Exclusive Use

The State shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by the Contractor in connection with this Contract. If any material, including software, is capable of being copyrighted, the State shall be the copyright owner and Contractor may copyright material connected with this project only with the express written approval of the State.

7. Patents, Copyrights, and Intellectual Property

7.1 If the Contractor furnishes any design, device, material, process, or other item, which is covered by a patent, trademark or service mark, or copyright or which is proprietary to, or a trade secret of, another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items.

7.2 The Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such item furnished by the Contractor infringes any patent, trademark, service mark, copyright, or trade secret. If a third party claims that a product infringes that party's patent, trademark, service mark, trade secret, or copyright, the Contractor will defend the State against that claim at Contractor's expense and will pay all damages, costs, and attorneys' fees that a court finally awards, provided the State: (a) promptly notifies the Contractor in writing of the claim; and (b) allows Contractor to control and cooperates with Contractor in, the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in Section 7.3 below.

7.3 If any products furnished by the Contractor become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement, the Contractor will, at its option and expense: (a) procure for the State the right to continue using the applicable item; (b) replace the product with a non-infringing product substantially complying with the item's specifications; or (c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.

8. Confidentiality

8.1 Subject to the Maryland Public Information Act and any other applicable laws including, without limitation, HIPAA, the HI-TECH ACT, and the Maryland Medical Records Act, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents, and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided that the data may be collected, used, disclosed, stored, and disseminated only as provided by and consistent with the law. The provisions of this section shall not apply to information that: (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already in the possession of such party; (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or (e) which such party is required to disclose by law.

8.2 This Section 8 shall survive expiration or termination of this Contract.

9. Loss of Data

In the event of loss of any State data or records where such loss is due to the intentional act or omission or negligence of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for recreating such lost data in the manner and on the schedule set by the Contract Monitor. The Contractor shall ensure that all data is backed up and recoverable by the Contractor. Contractor shall use its best efforts to assure that at no time shall any actions undertaken by the Contractor under this Contract (or any failures to act when Contractor has a duty to act) damage or create any vulnerabilities in data bases, systems, platforms, and/or applications with which the Contractor is working hereunder.

10. Indemnification

10.1 The Contractor shall hold harmless and indemnify the State from and against any and all losses, damages, claims, suits, actions, liabilities, and/or expenses, including, without limitation, attorneys' fees and disbursements of any character that arise from, are in connection with or are attributable to the performance or nonperformance of the Contractor or its subcontractors under this Contract.

10.2 This indemnification clause shall not be construed to mean that the Contractor shall indemnify the State against liability for any losses, damages, claims, suits, actions, liabilities, and/or expenses that are attributable to the sole negligence of the State or the State's employees.

10.3 The State of Maryland has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim, or action of any character is brought by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's performance under this Contract.

10.4 The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's performance under this Contract.

10.5 The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from, or relating to, the Contractor's

obligations under the Contract, and will cooperate, assist, and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of, or relating to, the Contractor's performance under this Contract.

10.6 This Section 10 shall survive termination of this Contract.

11. Non-Hiring of Employees

No official or employee of the State, as defined under Md. Code Ann., State Government Article, § 15-102, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State, become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

12. Disputes

This Contract shall be subject to the provisions of Md. Code Ann., State Finance and Procurement Article, Title 15, Subtitle 2, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute, regulation, or the Contract, the Contractor must file a written notice of claim with the Procurement Officer within thirty (30) days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within thirty (30) days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

13. Maryland Law

13.1 This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.

13.2 The Md. Code Ann., Commercial Law Article, Title 22, Maryland Uniform Computer Information Transactions Act, does not apply to this Contract or to any purchase order or Notice to Proceed issued under this Contract.

13.3 Any and all references to the Maryland Code, Annotated contained in this Contract shall be construed to refer to such Code sections as are from time to time amended.

14. Nondiscrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or disability of a qualified individual with a disability; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

15. Contingent Fee Prohibition

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of this Contract.

16. Non-availability of Funding

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

17. Termination for Cause

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

18. Termination for Convenience

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract; provided, however, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A(2).

19. Delays and Extensions of Time

The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays, interruptions, interferences, or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.

Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

20. Suspension of Work

The State unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

21. Pre-Existing Regulations

In accordance with the provisions of Md. Code Ann., State Finance and Procurement Article, § 11-206, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR 21) in effect on the date of execution of this Contract are applicable to this Contract.

22. Financial Disclosure

The Contractor shall comply with the provisions of Md. Code Ann., State Finance and Procurement Article, § 13-221, which requires that every person that enters into contracts, leases, or other agreements with the State or its agencies during a calendar year under which the business is to receive in the aggregate, \$100,000 or more, shall within thirty (30) days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of the State certain specified information to include disclosure of beneficial ownership of the business.

23. Political Contribution Disclosure

The Contractor shall comply with Md. Code Ann., Election Law Article, §§ 14-101 through 14-108, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall, file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (a) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (b) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (i) February 5, to cover the six (6) month period ending January 31; and (ii) August 5, to cover the six (6) month period ending July 31.

24. Documents Retention and Inspection Clause

The Contractor and subcontractors shall retain and maintain all records and documents relating to this contract for a period of five (5) years after final payment by the State hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section. This Section 24 shall survive expiration or termination of the Contract.

If the Contractor supplies services to a State residential health care facility under the Mental Hygiene Administration, the Family Health Administration, the Alcohol and Drug Abuse Administration, or the Developmental Disabilities Administration, the Contractor agrees, in addition to the requirements above,:

- 24.1 That pursuant to 42 Code of Federal Regulations (C.F.R.) Part 420, the Secretary of Health and Human Services, and the Comptroller General of the United States, or their duly-authorized representatives, shall be granted access to the Contractor's contract, books, documents, and records necessary to verify the cost of the services provided under this contract, until the expiration of four (4) years after the services are furnished under this contract; and
- 24.2 That similar access will be allowed to the books, documents, and records of any organization related to the Contractor or controlled by the Contractor (as those terms are defined in 42 C.F.R. 420.301) if that

organization is subcontracting to provide services with a value of \$10,000 or more in a twelve (12) month period to be reimbursed through funds provided by this contract.

25. Compliance with Laws

The Contractor hereby represents and warrants that:

- 25.1 It is qualified to do business in the State and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- 25.2 It is not in arrears with respect to the payment of any monies due and owing the State, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- 25.3 It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- 25.4 It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

26. Cost and Price Certification

By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of the date of its Bid/Proposal.

The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date of its Bid/Proposal, was inaccurate, incomplete, or not current.

27. Subcontracting; Assignment

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the Procurement Officer, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the Procurement Officer provided, however, that a contractor may assign monies receivable under a contract after due notice to the State. Any subcontracts shall include such language as may be required in various clauses contained within this Contract, exhibits, and attachments. The Contract shall not be assigned until all approvals, documents, and affidavits are completed and properly registered. The State shall not be responsible for fulfillment of the Contractor's obligations to its subcontractors.

28. Liability

- 28.1 For breach of this Contract, negligence, misrepresentation, or any other contract or tort claim, Contractor shall be liable as follows:
 - a. For infringement of patents, copyrights, trademarks, service marks, and/or trade secrets, as provided in Section 7 of this Contract;
 - b. Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and
 - c. For all other claims, damages, losses, costs, expenses, suits, or actions in any way related to this Contract, regardless of the form. Contractor's liability for third party claims arising under Section 10 of

this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 10.

29. Parent Company Guarantee (If Applicable)

(Corporate name of Contractor's Parent Company) hereby guarantees absolutely the full, prompt, and complete performance by (Contractor) of all the terms, conditions and obligations contained in this Contract, as it may be amended from time to time, including any and all exhibits that are now or may become incorporated hereunto, and other obligations of every nature and kind that now or may in the future arise out of or in connection with this Contract, including any and all financial commitments, obligations, and liabilities. (Corporate name of Contractor's Parent Company) may not transfer this absolute guaranty to any other person or entity without the prior express written approval of the State, which approval the State may grant, withhold, or qualify in its sole and absolute subjective discretion. (Corporate name of Contractor's Parent Company) further agrees that if the State brings any claim, action, suit or proceeding against (Contractor), (Corporate name of Contractor's Parent Company) may be named as a party, in its capacity as Absolute Guarantor.

30. Commercial Nondiscrimination

- 30.1 As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described at Md. Code Ann., State Finance and Procurement Article, Title 19. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
- 30.2 The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by the Department, in all subcontracts.
- 30.3 As a condition of entering into this Contract, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Contractor under Md. Code Ann., State Finance and Procurement Article, Title 19, as amended from time to time, Contractor agrees to provide within sixty (60) days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past four (4) years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth at Md. Code Ann., State Finance and Procurement Article, Title 19, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

31. Prompt Pay Requirements

- 31.1 If the Contractor withholds payment of an undisputed amount to its subcontractor, the Department, at its option and in its sole discretion, may take one or more of the following actions:

- a. Not process further payments to the contractor until payment to the subcontractor is verified;
 - b. Suspend all or some of the contract work without affecting the completion date(s) for the contract work;
 - c. Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;
 - d. Place a payment for an undisputed amount in an interest-bearing escrow account; or
 - e. Take other or further actions as appropriate to resolve the withheld payment.
- 31.2 An “undisputed amount” means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute. Such “undisputed amounts” include, without limitation,
- a. Retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractor, due to be distributed to the subcontractor; and
 - b. An amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.
- 31.3 An act, failure to act, or decision of a Procurement Officer or a representative of the Department, concerning a withheld payment between the Contractor and a subcontractor under this provision, may not:
- a. Affect the rights of the contracting parties under any other provision of law;
 - b. Be used as evidence on the merits of a dispute between the Department and the contractor in any other proceeding; or
 - c. Result in liability against or prejudice the rights of the Department.
- 31.4 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise (MBE) program.
- 31.5 To ensure compliance with certified MBE subcontract participation goals, the Department may, consistent with COMAR 21.11.03.13, take the following measures:
- a. Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule.
 - b. This verification may include, as appropriate:
 - i. Inspecting any relevant records of the Contractor;
 - ii. Inspecting the jobsite; and
 - iii. Interviewing subcontractors and workers.
 - iv. Verification shall include a review of:
 - (a) The Contractor’s monthly report listing unpaid invoices over thirty (30) days old from certified MBE subcontractors and the reason for nonpayment; and
 - (b) The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding thirty (30) days and invoices for which the subcontractor has not been paid.
 - c. If the Department determines that the Contractor is not in compliance with certified MBE participation goals, then the Department will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.
 - d. If the Department determines that the Contractor is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that the Department requires, then the Department may:
 - i. Terminate the contract;
 - ii. Refer the matter to the Office of the Attorney General for appropriate action; or
 - iii. Initiate any other specific remedy identified by the contract, including the contractual remedies required by any applicable laws, regulations, and directives regarding the payment of undisputed amounts.

- e. Upon completion of the Contract, but before final payment or release of retainage or both, the Contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from, MBE subcontractors.

32. Contract Monitor and Procurement Officer

The work to be accomplished under this Contract shall be performed under the direction of the Contract Monitor. All matters relating to the interpretation of this Contract shall be referred to the Procurement Officer for determination.

33. Notices

All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid, as follows:

If to the State: Michael Howard, CPPB
Procurement Officer
Maryland Department of Health and Mental Hygiene
Office of Procurement and Support Services
201 West Preston Street, Room 416
Baltimore, Maryland 21201

If to the Contractor: _____

34. Federal Department of Health and Human Services (DHHS) Exclusion Requirements

The Contractor agrees that it will comply with federal provisions (pursuant to §§ 1128 and 1156 of the Social Security Act and 42 C.F.R. 1001) that prohibit payments under certain federal health care programs to any individual or entity that is on the List of Excluded Individuals/Entities maintained by DHHS. By executing this contract, the Contractor affirmatively declares that neither it nor any employee is, to the best of its knowledge, subject to exclusion. The Contractor agrees, further, during the term of this contract, to check the List of Excluded Individuals/Entities prior to hiring or assigning individuals to work on this contract, and to notify the DHMH Office of Systems, Operations and Pharmacy immediately of any identification of the contractor or an individual employee as excluded, and of any DHHS action or proposed action to exclude the contractor or any contractor employee.

35. Confidentiality

The Contractor agrees to keep information obtained in the course of this contract confidential in compliance with Md. Code Ann., Health Occ §§ 1-401, 14-410, 14-411, and 14-506♣. The Contractor agrees further to comply with any applicable State and federal confidentiality requirements regarding collection, maintenance, and use of health and financial information. This includes, where appropriate, the federal Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. §§ 1320d et seq., and implementing regulations at 45 C.F.R. Parts 160 and 164, and the Maryland Confidentiality of Medical Records Act (MCMRA), Md. Code Ann. Health-General §§ 4-301 et seq. This obligation includes providing training and information to employees regarding confidentiality obligations as to health and financial information and securing acknowledgement of these obligations from employees to be involved in the contract. This obligation further includes restricting use and disclosure of the records, generally providing safeguards against misuse of information, keeping a record of any disclosures of information, providing all necessary procedural and legal

protection for any disclosures of information, promptly responding to any requests by the Department for information about its privacy practices in general or with respect to a particular individual, modifying information as may be required by good professional practice as authorized by law, and otherwise providing good information management practices regarding all health and financial information.

38. Miscellaneous

- 38.1 Any provision of this contract which contemplates performance or observance subsequent to any termination or expiration of this contract shall survive termination or expiration of this contract and continue in full force and effect.
- 38.2 If any term contained in this contract is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this contract, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.

39. Liquidated Damages (N/A)

40. Living Wage

If a Contractor subject to the Living Wage law fails to submit all records required under COMAR 21.11.10.05 to the Commissioner of Labor and Industry at the Department of Labor, Licensing and Regulation, the agency may withhold payment of any invoice or retainage. The agency may require certification from the Commissioner on a quarterly basis that such records were properly submitted.

IN WITNESS THEREOF, the parties have executed this Contract as of the date hereinabove set forth.

CONTRACTOR

STATE OF MARYLAND
DEPARTMENT OF HEALTH AND
MENTAL HYGIENE

By:

By: Joshua M. Sharfstein, M.D., Secretary

Date

Or designee:

Date

Approved for form and legal sufficiency
this ____ day of _____, 20__.

Assistant Attorney General

APPROVED BY BPW: _____
(Date)

(BPW Item #)

ATTACHMENT B – BID/PROPOSAL AFFIDAVIT

A. AUTHORITY

I hereby affirm that I, _____ (name of affiant) am the _____ (title) and duly authorized representative of _____ (name of business entity) and that I possess the legal authority to make this affidavit on behalf of the business for which I am acting.

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

The undersigned Bidder/Contractor hereby certifies and agrees that the following information is correct: In preparing its Bid/Proposal on this project, the Bidder/Contractor has considered all Proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in "discrimination" as defined in § 19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland. "Discrimination" means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners. "Discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination". Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the Bid/Proposal submitted by the Bidder/Contractor on this project, and terminate any contract awarded based on the Bid/Proposal. As part of its Bid/Proposal, the Bidder/Contractor herewith submits a list of all instances within the past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the Bidder/Contractor discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Bidder/Contractor agrees to comply in all respects with the State's Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

B-1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES.

The undersigned Bidder/Contractor hereby certifies and agrees that it has fully complied with the State Minority Business Enterprise Law, State Finance and Procurement Article, § 14-308(a)(2), Annotated Code of Maryland, which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a Bid/Proposal and:

- (1) Fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified minority Proposal;
- (2) Fail to notify the certified minority business enterprise before execution of the contract of its inclusion in the Bid/Proposal;
- (3) Fail to use the certified minority business enterprise in the performance of the contract; or
- (4) Pay the certified minority business enterprise solely for the use of its name in the Bid/Proposal.

Without limiting any other provision of the solicitation on this project, it is understood that if the certification is false, such false certification constitutes grounds for the State to reject the Bid/Proposal submitted by the Bidder/Contractor on this project, and terminate any contract awarded based on the Bid/Proposal.

B-2. CERTIFICATION REGARDING VETERAN-OWNED SMALL BUSINESS ENTERPRISES.

The undersigned Bidder/Contractor hereby certifies and agrees that it has fully complied with the State veteran-owned small business enterprise law, State Finance and Procurement Article, § 14-605, Annotated Code of Maryland, which provides that a person may not:

- (1) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain public money, procurement contracts, or funds expended under a procurement contract to which the person is not entitled under this title;
- (2) Knowingly and with intent to defraud, fraudulently represent participation of a veteran-owned small business enterprise in order to obtain or retain a Bid/Proposal preference or a procurement contract;
- (3) Willfully and knowingly make or subscribe to any statement, declaration, or other document that is fraudulent or false as to any material matter, whether or not that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (4) Willfully and knowingly aid, assist in, procure, counsel, or advise the preparation or presentation of a declaration, statement, or other document that is fraudulent or false as to any material matter, regardless of whether that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (5) Willfully and knowingly fail to file any declaration or notice with the unit that is required by COMAR 21.11.12; or
- (6) Establish, knowingly aid in the establishment of, or exercise control over a business found to have violated a provision of § B-2(1)-(5) of this regulation.

C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies has been convicted of, or has had probation before judgment imposed pursuant to Criminal Procedure Article, § 6-220, Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies, has:

(1) Been convicted under state or federal statute of:

(a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or

(b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;

(2) Been convicted of any criminal violation of a state or federal antitrust statute;

(3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of Bids/Proposals for a public or private contract;

(4) Been convicted of a violation of the State Minority Business Enterprise Law, § 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(5) Been convicted of a violation of § 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;

(7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of Bids/Proposals for a public or private contract;

(8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract; or

(9) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§ B and C and subsections D(1)—(8) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities, including obtaining or performing contracts with public bodies, has ever been suspended or debarred

(including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension).

F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

(1) The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and

(2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):

G. SUBCONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business has:

(1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying Bid/Proposal that is being submitted;

(2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the Bid/Proposal price of the Bidder/Contractor or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying Bid/Proposal is submitted.

I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT:

Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

The business has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of the Contract.

K. CERTIFICATION REGARDING INVESTMENTS IN IRAN

(1) The undersigned certifies that, in accordance with State Finance and Procurement Article, §17-705, Annotated Code of Maryland:

(a) It is not identified on the list created by the Board of Public Works as a person engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland; and

(b) It is not engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland.

2. The undersigned is unable to make the above certification regarding its investment activities in Iran due to the following activities: _____

L. CONFLICT MINERALS ORIGINATED IN THE DEMOCRATIC REPUBLIC OF CONGO (FOR SUPPLIES AND SERVICES CONTRACTS)

I FURTHER AFFIRM THAT:

The business has complied with the provisions of State Finance and Procurement Article, §14-413, Annotated Code of Maryland governing proper disclosure of certain information regarding conflict minerals originating in the Democratic Republic of Congo or its neighboring countries as required by federal law.

M. ACKNOWLEDGEMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this Bid/Proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____

By: _____ (print name of Authorized Representative and Affiant)

_____ (signature of Authorized Representative and Affiant)

ATTACHMENT C – CONTRACT AFFIDAVIT

A. AUTHORITY

I hereby affirm that I, _____ (name of affiant) am the _____ (title) and duly authorized representative of _____ (name of business entity) and that I possess the legal authority to make this affidavit on behalf of the business for which I am acting.

B. CERTIFICATION OF REGISTRATION OR QUALIFICATION WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION

I FURTHER AFFIRM THAT:

The business named above is a (check applicable box):

- (1) Corporation — domestic or foreign;
- (2) Limited Liability Company — domestic or foreign;
- (3) Partnership — domestic or foreign;
- (4) Statutory Trust — domestic or foreign;
- (5) Sole Proprietorship.

and is registered or qualified as required under Maryland Law. I further affirm that the above business is in good standing both in Maryland and (IF APPLICABLE) in the jurisdiction where it is presently organized, and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation. The name and address of its resident agent (IF APPLICABLE) filed with the State Department of Assessments and Taxation is:

Name and Department ID
Number: _____ Address: _____

and that if it does business under a trade name, it has filed a certificate with the State Department of Assessments and Taxation that correctly identifies that true name and address of the principal or owner as:

Name and Department ID
Number: _____ Address: _____

C. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, §§14-101 — 14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of

Maryland, including its agencies or a political subdivision of the State, during a calendar year in which the person receives in the aggregate \$100,000 or more shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

E. DRUG AND ALCOHOL FREE WORKPLACE

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

I CERTIFY THAT:

- (1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.
- (2) By submission of its Bid/Proposal, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:
 - (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
 - (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
 - (c) Prohibit its employees from working under the influence of drugs or alcohol;
 - (d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
 - (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
 - (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
 - (i) The dangers of drug and alcohol abuse in the workplace;
 - (ii) The business's policy of maintaining a drug and alcohol free workplace;
 - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
 - (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §E(2)(b), above;
 - (h) Notify its employees in the statement required by §E(2)(b), above, that as a condition of continued employment on the contract, the employee shall:
 - (i) Abide by the terms of the statement; and
 - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;
 - (i) Notify the procurement officer within 10 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;

(j) Within 30 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:

- (i) Take appropriate personnel action against an employee, up to and including termination; or
- (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and

(k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §E(2)(a)—(j), above.

(3) If the business is an individual, the individual shall certify and agree as set forth in §E(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.

(4) I acknowledge and agree that:

(a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;

(b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and

(c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Bid/Proposal Affidavit dated _____, 201____, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____

By: _____ (printed name of Authorized Representative and Affiant)

_____ (signature of Authorized Representative and Affiant)

ATTACHMENT D – MINORITY BUSINESS ENTERPRISE FORMS

This solicitation does not include a Minority Business Enterprise (MBE) subcontractor participation goal.

ATTACHMENT E – PRE-PROPOSAL CONFERENCE RESPONSE FORM

**Solicitation Number OPASS 15-14125
Maryland Physicians Rehabilitation Program**

A Pre-Proposal Conference will be held at **2:00 PM Local Time** on **09/09/2014**, at **4201 Patterson Ave, RM 100, Baltimore, MD 21215**. Please return this form by **09/04/2014**, advising whether or not you plan to attend.

Return via e-mail or fax this form to the (“Procurement Coordinator”):

Regina Rouchard
Maryland Board of Physicians
Department of Health and Mental Hygiene
4201 Patterson Ave, Baltimore, MD 21215
Email: regina.rouchard@maryland.gov
Fax #: 410-358-1298

Please indicate:

_____ Yes, the following representatives will be in attendance:

- 1.
- 2.
- 3.

_____ No, we will not be in attendance.

Please specify whether any reasonable accommodations are requested (see RFP § 1.7 “Pre-Proposal Conference”):

Signature Title

Name of Firm (please print)

ATTACHMENT F – FINANCIAL PROPOSAL INSTRUCTIONS

In order to assist Contractors in the preparation of their Financial Proposal and to comply with the requirements of this solicitation, Financial Proposal Instructions and a Financial Proposal Form have been prepared. Contractors shall submit their Financial Proposal on the Financial Proposal Form in accordance with the instructions on the Financial Proposal Form and as specified herein. Do not alter the Financial Proposal Form or the Proposal may be determined to be not reasonably susceptible of being selected for award. The Financial Proposal Form is to be signed and dated, where requested, by an individual who is authorized to bind the Contractor to the prices entered on the Financial Proposal Form.

The Financial Proposal Form is used to calculate the Contractor's TOTAL PROPOSAL PRICE. Follow these instructions carefully when completing your Financial Proposal Form:

- A) All Unit and Extended Prices must be clearly entered in dollars and cents, e.g., \$24.15. Make your decimal points clear and distinct.
- B) All Unit Prices must be the actual price per unit the State will pay for the specific item or service identified in this RFP and may not be contingent on any other factor or condition in any manner.
- C) All calculations shall be rounded to the nearest cent, i.e., .344 shall be .34 and .345 shall be .35.
- D) Any goods or services required through this RFP and proposed by the vendor at **No Cost to the State** must be clearly entered in the Unit Price, if appropriate, and Extended Price with **\$0.00**.
- E) Every blank in every Financial Proposal Form shall be filled in. Any changes or corrections made to the Financial Proposal Form by the Contractor prior to submission shall be initialed and dated.
- F) Except as instructed on the Financial Proposal Form, nothing shall be entered on or attached to the Financial Proposal Form that alters or proposes conditions or contingencies on the prices. Alterations and/or conditions may render the Proposal not reasonably susceptible of being selected for award.
- G) It is imperative that the prices included on the Financial Proposal Form have been entered correctly and calculated accurately by the Contractor and that the respective total prices agree with the entries on the Financial Proposal Form. Any incorrect entries or inaccurate calculations by the Contractor will be treated as provided in COMAR 21.05.03.03E and 21.05.02.12, and may cause the Proposal to be rejected.
- H) If option years are included, Contractors must submit pricing for each option year. Any option to renew will be exercised at the sole discretion of the State and will comply with all terms and conditions in force at the time the option is exercised. If exercised, the option period shall be for a period identified in the RFP at the prices entered in the Financial Proposal Form.
- I) All Financial Proposal prices entered below are to be fully loaded prices that include all costs/expenses associated with the provision of services as required by the RFP. The Financial Proposal price shall include, but is not limited to, all: labor, profit/overhead, general operating, administrative, and all other expenses and costs necessary to perform the work set forth in the solicitation. No other amounts will be paid to the Contractor. If labor rates are requested, those amounts shall be fully-loaded rates; no overtime amounts will be paid.
- J) Unless indicated elsewhere in the RFP, sample amounts used for calculations on the Financial Proposal Form are typically estimates for evaluation purposes only. Unless stated otherwise in the RFP, the Department does not guarantee a minimum or maximum number of units or usage in the performance of this Contract.
- K) Failure to adhere to any of these instructions may result in the Proposal being determined not reasonably susceptible of being selected for award.

ATTACHMENT F – FINANCIAL PROPOSAL FORM

FINANCIAL PROPOSAL FORM

The Financial Proposal Form shall contain all price information in the format specified on these pages. Complete the Financial Proposal Form only as provided in the Financial Proposal Instructions. Do not amend, alter or leave blank any items on the Financial Proposal Form. If option years are included, Contractors must submit pricing for each option year. Failure to adhere to any of these instructions may result in the Proposal being determined not reasonably susceptible of being selected for award.

YEAR 1

Annual price to treat up to and including 100 participants

\$ _____ +

Year 1 Total

= \$ _____ **(a)**

YEAR 2

Annual price to treat up to and including 100 participants

\$ _____ +

Year 2 Total

= \$ _____ **(b)**

YEAR 3

Annual Price to treat up to and including 100 participants

\$ _____ +

Year 3 Total

= \$ _____ **(c)**

YEAR 4

Annual price to treat up to and including 100 participants

\$ _____ +

Year 4 Total

= \$ _____ **(d)**

YEAR 5

Annual price to treat up to and including 100 participants

\$ _____ +

Year 5 Total

= \$ _____ **(e)**

TOTAL EVALUATED PROPOSAL PRICE (a)+(b)+(c)+(d)+(e) =

\$

Submitted By:

Authorized Signature: _____ Date: _____

Printed Name and Title: _____

Company Name: _____

Company Address: _____

Location(s) from which services will be performed (City/State): _____

FEIN: _____

eMM #: _____

Telephone: (_____) _____ -- _____

Fax: (_____) _____ -- _____

E-mail: _____

ATTACHMENT G – LIVING WAGE REQUIREMENTS FOR SERVICE CONTRACTS

Living Wage Requirements for Service Contracts

- A. This contract is subject to the Living Wage requirements under Md. Code Ann., State Finance and Procurement Article, Title 18, and the regulations proposed by the Commissioner of Labor and Industry (Commissioner). The Living Wage generally applies to a Contractor or Subcontractor who performs work on a State contract for services that is valued at \$100,000 or more. An employee is subject to the Living Wage if he/she is at least 18 years old or will turn 18 during the duration of the contract; works at least 13 consecutive weeks on the State Contract and spends at least one-half of the employee's time during any work week on the State Contract.
- B. The Living Wage Law does not apply to:
- (1) A Contractor who:
 - (a) Has a State contract for services valued at less than \$100,000, or
 - (b) Employs 10 or fewer employees and has a State contract for services valued at less than \$500,000.
 - (2) A Subcontractor who:
 - (a) Performs work on a State contract for services valued at less than \$100,000,
 - (b) Employs 10 or fewer employees and performs work on a State contract for services valued at less than \$500,000, or
 - (c) Performs work for a Contractor not covered by the Living Wage Law as defined in B(1)(b) above, or B(3) or C below.
 - (3) Service contracts for the following:
 - (a) Services with a Public Service Company;
 - (b) Services with a nonprofit organization;
 - (c) Services with an officer or other entity that is in the Executive Branch of the State government and is authorized by law to enter into a procurement ("Unit"); or
 - (d) Services between a Unit and a County or Baltimore City.
- C. If the Unit responsible for the State contract for services determines that application of the Living Wage would conflict with any applicable Federal program, the Living Wage does not apply to the contract or program.
- D. A Contractor must not split or subdivide a State contract for services, pay an employee through a third party, or treat an employee as an independent Contractor or assign work to employees to avoid

the imposition of any of the requirements of Md. Code Ann., State Finance and Procurement Article, Title 18.

- E. Each Contractor/Subcontractor, subject to the Living Wage Law, shall post in a prominent and easily accessible place at the work site(s) of covered employees a notice of the Living Wage Rates, employee rights under the law, and the name, address, and telephone number of the Commissioner.
- F. The Commissioner shall adjust the wage rates by the annual average increase or decrease, if any, in the Consumer Price Index for all urban consumers for the Washington/Baltimore metropolitan area, or any successor index, for the previous calendar year, not later than 90 days after the start of each fiscal year. The Commissioner shall publish any adjustments to the wage rates on the Division of Labor and Industry's website. An employer subject to the Living Wage Law must comply with the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate, required by the Commissioner, automatically upon the effective date of the revised wage rate.
- G. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of the health insurance premium, as provided in Md. Code Ann., State Finance and Procurement Article, §18-103(c), shall not lower an employee's wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of health insurance premium shall comply with any record reporting requirements established by the Commissioner.
- H. A Contractor/Subcontractor may reduce the wage rates paid under Md. Code Ann., State Finance and Procurement Article, §18-103(a), by no more than 50 cents of the hourly cost of the employer's contribution to an employee's deferred compensation plan. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's contribution to an employee's deferred compensation plan shall not lower the employee's wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413.
- I. Under Md. Code Ann., State Finance and Procurement Article, Title 18, if the Commissioner determines that the Contractor/Subcontractor violated a provision of this title or regulations of the Commissioner, the Contractor/Subcontractor shall pay restitution to each affected employee, and the State may assess liquidated damages of \$20 per day for each employee paid less than the Living Wage.
- J. The Commissioner of Labor and Industry at the Department of Labor, Licensing and Regulation requires that a contractor subject to the Living Wage law submit payroll records for covered employees and a signed statement indicating that it paid a living wage to covered employees; or receive a waiver from Living Wage reporting requirements. See COMAR 21.11.10.05. If subject to the Living Wage law, Contractor agrees that it will abide by all Living Wage law requirements, including but not limited to reporting requirements in COMAR 21.11.10.05. Contractor understands that failure of Contractor to provide such documents is a material breach of the terms and conditions and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions. Information pertaining to reporting obligations may be found by going to the Division of Labor and Industry website <http://www.dllr.state.md.us/labor/> and clicking on Living Wage for State Service Contracts.

ATTACHMENT G-1

Maryland Living Wage Requirements Affidavit of Agreement

(Submit with Bid/Proposal)

Contract No. _____

Name of Contractor _____

Address _____

City _____ State _____ Zip Code _____

If the Contract Is Exempt from the Living Wage Law

The Undersigned, being an authorized representative of the above named Contractor, hereby affirms that the Contract is exempt from Maryland's Living Wage Law for the following reasons (check all that apply):

- Bidder/Contractor is a nonprofit organization
- Bidder/Contractor is a public service company
- Bidder/Contractor employs 10 or fewer employees and the proposed contract value is less than \$500,000
- Bidder/Contractor employs more than 10 employees and the proposed contract value is less than \$100,000

If the Contract Is a Living Wage Contract

A. The Undersigned, being an authorized representative of the above-named Contractor, hereby affirms its commitment to comply with Title 18, State Finance and Procurement Article, Annotated Code of Maryland and, if required, to submit all payroll reports to the Commissioner of Labor and Industry with regard to the above stated contract. The Bidder/Contractor agrees to pay covered employees who are subject to living wage at least the living wage rate in effect at the time service is provided for hours spent on State contract activities, and to ensure that its Subcontractors who are not exempt also pay the required living wage rate to their covered employees who are subject to the living wage for hours spent on a State contract for services. The Contractor agrees to comply with, and ensure its Subcontractors comply with, the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate established by the Commissioner of Labor and Industry, automatically upon the effective date of the revised wage rate.

B. _____ (initial here if applicable) The Bidder/Contractor affirms it has no covered employees for the following reasons: (check all that apply):

- The employee(s) proposed to work on the contract will spend less than one-half of the employee's time during any work week on the contract

- The employee(s) proposed to work on the contract is 17 years of age or younger during the duration of the contract; or
- The employee(s) proposed to work on the contract will work less than 13 consecutive weeks on the State contract.

The Commissioner of Labor and Industry reserves the right to request payroll records and other data that the Commissioner deems sufficient to confirm these affirmations at any time.

Name of Authorized Representative: _____

Signature of Authorized Representative Date

Title

Witness Name (Typed or Printed)

Witness Signature Date

(submit with Bid/Proposal)

ATTACHMENT H - FEDERAL FUNDS ATTACHMENT

This solicitation does not include a Federal Funds Attachment.

ATTACHMENT I – CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE

Reference COMAR 21.05.08.08

(submit with Bid/Proposal)

A. "Conflict of interest" means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the State, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

B. "Person" has the meaning stated in COMAR 21.01.02.01B(64) and includes a Bidder/Contractor, Contractor, consultant, or subcontractor or sub-consultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a Bid/Proposal is made.

C. The Bidder/Contractor warrants that, except as disclosed in §D, below, there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to a conflict of interest.

D. The following facts or circumstances give rise or could in the future give rise to a conflict of interest (explain in detail—attach additional sheets if necessary):

E. The Bidder/Contractor agrees that if an actual or potential conflict of interest arises after the date of this affidavit, the Bidder/Contractor shall immediately make a full disclosure in writing to the procurement officer of all relevant facts and circumstances. This disclosure shall include a description of actions which the Bidder/Contractor has taken and proposes to take to avoid, mitigate, or neutralize the actual or potential conflict of interest. If the contract has been awarded and performance of the contract has begun, the Contractor shall continue performance until notified by the procurement officer of any contrary action to be taken.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____ By: _____

(Authorized Representative and Affiant)

ATTACHMENT J – NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT (“Agreement”) is made by and between the State of Maryland (the “State”), acting by and through its Department of Health and Mental Hygiene (the “Department”), and _____ (the “Contractor”).

RECITALS

WHEREAS, the Contractor has been awarded a contract (the “Contract”) following the solicitation for Board of Physicians Rehabilitation Services Solicitation # DHMH OPASS 15-14125; and

WHEREAS, in order for the Contractor to perform the work required under the Contract, it will be necessary for the State at times to provide the Contractor and the Contractor’s employees, agents, and subcontractors (collectively the “Contractor’s Personnel”) with access to certain information the State deems confidential information (the “Confidential Information”).

NOW, THEREFORE, in consideration of being given access to the Confidential Information in connection with the RFP and the Contract, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge the parties do hereby agree as follows:

1. Confidential Information means any and all information provided by or made available by the State to the Contractor in connection with the Contract, regardless of the form, format, or media on or in which the Confidential Information is provided and regardless of whether any such Confidential Information is marked as such. Confidential Information includes, by way of example only, information that the Contractor views, takes notes from, copies (if the State agrees in writing to permit copying), possesses or is otherwise provided access to and use of by the State in relation to the Contract.
2. Contractor shall not, without the State’s prior written consent, copy, disclose, publish, release, transfer, disseminate, use, or allow access for any purpose or in any form, any Confidential Information provided by the State except for the sole and exclusive purpose of performing under the Contract. Contractor shall limit access to the Confidential Information to the Contractor’s Personnel who have a demonstrable need to know such Confidential Information in order to perform under the Contract and who have agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information. The names of the Contractor’s Personnel are attached hereto and made a part hereof as ATTACHMENT J-1. Contractor shall update ATTACHMENT J-1 by adding additional names (whether Contractor’s personnel or a subcontractor’s personnel) as needed, from time to time.
3. If the Contractor intends to disseminate any portion of the Confidential Information to non-employee agents who are assisting in the Contractor’s performance of the IFB or who will otherwise have a role in performing any aspect of the IFB, the Contractor shall first obtain the written consent of the State to any such dissemination. The State may grant, deny, or condition any such consent, as it may deem appropriate in its sole and absolute subjective discretion.
4. Contractor hereby agrees to hold the Confidential Information in trust and in strictest confidence, to adopt or establish operating procedures and physical security measures, and to take all other measures necessary to protect the Confidential Information from inadvertent release or disclosure to unauthorized third parties and to prevent all or any portion of the Confidential Information from falling into the public domain or into the possession of persons not bound to maintain the confidentiality of the Confidential Information.
5. Contractor shall promptly advise the State in writing if it learns of any unauthorized use, misappropriation, or disclosure of the Confidential Information by any of the Contractor’s Personnel or the Contractor’s former Personnel. Contractor shall, at its own expense, cooperate with the State in seeking injunctive or other equitable relief against any such person(s).
6. Contractor shall, at its own expense, return to the Department, all copies of the Confidential Information in its care, custody, control or possession upon request of the Department or on termination of the Contract.

7. A breach of this Agreement by the Contractor or by the Contractor's Personnel shall constitute a breach of the Contract between the Contractor and the State.
8. Contractor acknowledges that any failure by the Contractor or the Contractor's Personnel to abide by the terms and conditions of use of the Confidential Information may cause irreparable harm to the State and that monetary damages may be inadequate to compensate the State for such breach. Accordingly, the Contractor agrees that the State may obtain an injunction to prevent the disclosure, copying or improper use of the Confidential Information. The Contractor consents to personal jurisdiction in the Maryland State Courts. The State's rights and remedies hereunder are cumulative and the State expressly reserves any and all rights, remedies, claims and actions that it may have now or in the future to protect the Confidential Information and to seek damages from the Contractor and the Contractor's Personnel for a failure to comply with the requirements of this Agreement. In the event the State suffers any losses, damages, liabilities, expenses, or costs (including, by way of example only, attorneys' fees and disbursements) that are attributable, in whole or in part to any failure by the Contractor or any of the Contractor's Personnel to comply with the requirements of this Agreement, the Contractor shall hold harmless and indemnify the State from and against any such losses, damages, liabilities, expenses, and costs.
9. Contractor and each of the Contractor's Personnel who receive or have access to any Confidential Information shall execute a copy of an agreement substantially similar to this Agreement, in no event less restrictive than as set forth in this Agreement, and the Contractor shall provide originals of such executed Agreements to the State.
10. The parties further agree that:
 - a. This Agreement shall be governed by the laws of the State of Maryland;
 - b. The rights and obligations of the Contractor under this Agreement may not be assigned or delegated, by operation of law or otherwise, without the prior written consent of the State;
 - c. The State makes no representations or warranties as to the accuracy or completeness of any Confidential Information;
 - d. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement;
 - e. Signatures exchanged by facsimile are effective for all purposes hereunder to the same extent as original signatures;
 - f. The Recitals are not merely prefatory but are an integral part hereof; and
 - g. The effective date of this Agreement shall be the same as the effective date of the Contract entered into by the parties.

IN WITNESS WHEREOF, the parties have, by their duly authorized representatives, executed this Agreement as of the day and year first above written.

Contractor: _____

Maryland Department of Health and Mental Hygiene

By: _____ (SEAL)

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

NON-DISCLOSURE AGREEMENT - ATTACHMENT J-1

LIST OF CONTRACTOR'S EMPLOYEES AND AGENTS WHO WILL BE GIVEN ACCESS TO THE CONFIDENTIAL INFORMATION

Printed Name and Address of Individual/Agent	Employee (E) or Agent (A)	Signature	Date
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
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_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

NON-DISCLOSURE AGREEMENT – ATTACHMENT J-2

CERTIFICATION TO ACCOMPANY RETURN OF CONFIDENTIAL INFORMATION

I AFFIRM THAT:

To the best of my knowledge, information, and belief, and upon due inquiry, I hereby certify that: (i) all Confidential Information which is the subject matter of that certain Non-Disclosure Agreement by and between the State of Maryland and

_____ (“Contractor”) dated _____, 20____ (“Agreement”) is attached hereto and is hereby returned to the State in accordance with the terms and conditions of the Agreement; and (ii) I am legally authorized to bind the Contractor to this affirmation.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, HAVING MADE DUE INQUIRY.

DATE: _____

NAME OF CONTRACTOR: _____

BY: _____
(Signature)

TITLE: _____
(Authorized Representative and Affiant)

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “Agreement”) is made by and between the Maryland Board of Physicians a unit of the Maryland Department of Health and Mental Hygiene (herein referred to as “Covered Entity”) and _____ (Insert Name of Contractor) (hereinafter known as “Business Associate”). Covered Entity and Business Associate shall collectively be known herein as the “Parties.”

WHEREAS, Covered Entity has a business relationship with Business Associate that is memorialized in a separate agreement (the “Underlying Agreement”) pursuant to which Business Associate may be considered a “business associate” of Covered Entity as defined in the Health Insurance Portability and Accountability Act of 1996 including all pertinent privacy regulations (45 C.F.R. Parts 160 and 164) and security regulations (45 C.F.R. Parts 160, 162, and 164), as amended from time to time, issued by the U.S. Department of Health and Human Services as either have been amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (collectively, “HIPAA”); and

WHEREAS, the nature of the contractual relationship between Covered Entity and Business Associate may involve the exchange of Protected Health Information (“PHI”) as that term is defined under HIPAA; and

WHEREAS, for good and lawful consideration as set forth in the Underlying Agreement, Covered Entity and Business Associate enter into this Agreement for the purpose of ensuring compliance with the requirements of HIPAA and the Maryland Confidentiality of Medical Records Act (Md. Ann. Code, Health-General §§ 4-301 *et seq.*) (“MCMRA”); and

WHEREAS, this Agreement supersedes and replaces any and all Business Associate Agreements the Covered Entity and Business Associate may have entered into prior to the date hereof;

NOW THEREFORE, the premises having been considered and with acknowledgment of the mutual promises and of other good and valuable consideration herein contained, the Parties, intending to be legally bound, hereby agree as follows:

DEFINITIONS

- A. Catch-all definition. The following terms used in this Agreement, whether capitalized or not, shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.
- B. Specific definitions:

1. Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 C.F.R. 160.103, and in reference to the party to this agreement, shall mean (Insert Name of Contractor).
2. Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 C.F.R. § 160.103, and in reference to the party to this agreement, shall mean Maryland Board of Physicians
3. HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Parts 160 and Part 164.
4. Protected Health Information (“PHI”). Protected Health Information or “PHI” shall generally have the same meaning as the term “protected health information” at 45 C.F.R. § 160.103.

PERMITTED USES AND DISCLOSURES OF PHI BY BUSINESS ASSOCIATE

- A. Business Associate may only use or disclose PHI as necessary to perform the services set forth in the Underlying Agreement or as required by law.
- B. Business Associate agrees to make uses and disclosures and requests for PHI consistent with Covered Entity’s policies and procedures regarding minimum necessary use of PHI.
- C. Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity.
- D. Business Associate may, if directed to do so in writing by Covered Entity, create a limited data set, as defined at 45 CFR 164.514(e)(2) , for use in public health, research, or health care operations. Any such limited data sets shall omit any of the identifying information listed in 45 CFR § 164.514(e)(2). Business Associate will enter into a valid, HIPAA-compliant Data Use Agreement, as described in 45 CFR § 164.514(e) (4), with the limited data set recipient. Business Associate will report any material breach or violation of the data use agreement to Covered Entity immediately after it becomes aware of any such material breach or violation.
- E. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration, or legal responsibilities of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- F. The Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI of an Individual pursuant to §§13405(d)(1) and (2) of the HITECH Act. This prohibition does not apply to the State’s payment of Business Associate for its performance pursuant to the Underlying Agreement.
- G. The Business Associate shall comply with the limitations on marketing and fundraising communications provided in §13406 of the HITECH Act in connection with any PHI of Individuals.

DUTIES OF BUSINESS ASSOCIATE RELATIVE TO PHI

- A. Business Associate agrees that it will not use or disclose PHI other than as permitted or required by the Agreement or as Required by Law;
- B. Business Associate agrees to use appropriate administrative, technical and physical safeguards to protect the privacy of PHI.
- C. Business Associate agrees to use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by the Agreement;
- D. 1. Business Associate agrees to Report to Covered Entity any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of unsecured PHI as required by 45 C.F.R. § 164.410, and any Security Incident of which it becomes aware without reasonable delay, and in no case later than fifteen calendar days after the use or disclosure;
- 2. If the use or disclosure amounts to a breach of unsecured PHI, the Business Associate shall ensure its report:
 - a. Is made to Covered Entity without unreasonable delay and in no case later than fifteen (15) calendar days after the incident constituting the Breach is first known, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. For purposes of clarity for this Section III.D.1, Business Associate must notify Covered Entity of an incident involving the acquisition, access, use or disclosure of PHI in a manner not permitted under 45 C.F.R. Part E within fifteen (15) calendar days after an incident even if Business Associate has not conclusively determined within that time that the incident constitutes a Breach as defined by HIPAA;
 - b. Includes the names of the Individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach;
 - c. Is in substantially the same form as **ATTACHMENT K-1** attached hereto; and
 - d. Includes a draft letter for the Covered Entity to utilize to notify the affected Individuals that their Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach that includes, to the extent possible:
 - i) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - ii) A description of the types of Unsecured PHI that were involved in the Breach (such as full name, Social Security number, date of birth, home address, account number, disability code, or other types of information that were involved);
 - iii) Any steps the affected Individuals should take to protect themselves from potential harm resulting from the Breach;
 - iv) A brief description of what the Covered Entity and the Business Associate are doing to investigate the Breach, to mitigate losses, and to protect against any further Breaches; and
 - v) Contact procedures for the affected Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, website, or postal address.

- E. To the extent permitted by the Underlying Agreement, Business Associate may use agents and subcontractors. In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2) shall ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information, Business Associate must enter into Business Associate Agreements with subcontractors as required by HIPAA;
- F. Business Associate agrees it will make available PHI in a designated record set to the Covered Entity, or, as directed by the Covered Entity, to an individual, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.524, including, if requested, a copy in electronic format;
- G. Business Associate agrees it will make any amendment(s) to PHI in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 C.F.R. § 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.526;
- H. Business Associate agrees to maintain and make available the information required to provide an accounting of disclosures to the Covered Entity or, as directed by the Covered Entity, to an individual, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.528;
- I. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s);
- J. Business Associate agrees to make its internal practices, books, and records, including PHI, available to the Covered Entity and/or the Secretary for purposes of determining compliance with the HIPAA Rules.
- K. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

TERM AND TERMINATION

- A. Term. The Term of this Agreement shall be effective as of the effective date of the Contract entered into following the solicitation for Maryland Physicians Rehabilitation Program, Solicitation # DHMH OPASS 15-14125, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or the PHI created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, in accordance with the termination provisions in this Section IV, or on the date the Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner. If it is impossible to return or destroy all of the PHI provided by Covered Entity to Business Associate, or the PHI created or received by Business Associate on behalf of Covered Entity, Business Associate's obligations under this contract shall be ongoing with respect to that information, unless and until a separate written agreement regarding that information is entered into with Covered Entity.
- B. Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall:

1. Provide an opportunity for Business Associate to cure the breach or end the violation and, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, terminate this Agreement; or
2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and Covered entity determines or reasonably believes that cure is not possible.

C. Effect of Termination.

1. Upon termination of this Agreement, for any reason, Business Associate shall return or, if agreed to by Covered Entity, destroy all PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form. Business Associate shall retain no copies of the PHI. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.
2. Should Business Associate make an intentional or grossly negligent Breach of PHI in violation of this Agreement or HIPAA or an intentional or grossly negligent disclosure of information protected by the MCMRA, Covered Entity shall have the right to immediately terminate any contract, other than this Agreement, then in force between the Parties, including the Underlying Agreement.

D. Survival. The obligations of Business Associate under this Section shall survive the termination of this agreement.

CONSIDERATION

Business Associate recognizes that the promises it has made in this Agreement shall, henceforth, be detrimentally relied upon by Covered Entity in choosing to continue or commence a business relationship with Business Associate.

REMEDIES IN EVENT OF BREACH

Business Associate hereby recognizes that irreparable harm will result to Covered Entity, and to the business of Covered Entity, in the event of breach by Business Associate of any of the covenants and assurances contained in this Agreement. As such, in the event of breach of any of the covenants and assurances contained in Sections II or III above, Covered Entity shall be entitled to enjoin and restrain Business Associate from any continued violation of Sections II or III. Furthermore, in the event of breach of Sections II or III by Business Associate, Covered Entity is entitled to reimbursement and indemnification from Business Associate for Covered Entity's reasonable attorneys' fees and expenses and costs that were reasonably incurred as a proximate result of Business Associate's breach. The remedies contained in this Section VI shall be in addition to, not in lieu of, any action for damages and/or any other remedy Covered Entity may have for breach of any part of this Agreement or the Underlying Agreement or which may be available to Covered Entity at law or in equity.

MODIFICATION; AMENDMENT

This Agreement may only be modified or amended through a writing signed by the Parties and, thus, no oral modification or amendment hereof shall be permitted. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the HIPAA rules and any other applicable law.

**INTERPRETATION OF THIS AGREEMENT IN RELATION TO OTHER AGREEMENTS
BETWEEN THE PARTIES**

Should there be any conflict between the language of this Agreement and any other contract entered into between the Parties (either previous or subsequent to the date of this Agreement), the language and provisions of this Agreement shall control and prevail unless the parties specifically refer in a subsequent written agreement to this Agreement by its title and date and specifically state that the provisions of the later written agreement shall control over this Agreement.

COMPLIANCE WITH STATE LAW

The Business Associate acknowledges that by accepting the PHI from Covered Entity, it becomes a holder of medical information under the MCMRA and is subject to the provisions of that law. If the HIPAA Privacy or Security Rules and the MCMRA conflict regarding the degree of protection provided for PHI, Business Associate shall comply with the more restrictive protection requirement.

MISCELLANEOUS

- A. Ambiguity. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy and Security Rules.
- B. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- C. Notice to Covered Entity. Any notice required under this Agreement to be given Covered Entity shall be made in writing to:

Ramiak James, Esq.
 Privacy Officer and Compliance Analyst
 Department of Health & Mental Hygiene
 Office of the Inspector General
 201 W. Preston Street, Floor 5
 Baltimore, MD 21201-2301
 Phone: (410) 767-5411

- D. Notice to Business Associate. Any notice required under this Agreement to be given Business Associate shall be made in writing to:

Address: _____

Attention: _____

Phone: _____

- E. Survival. Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this contract shall survive termination or expiration of this Agreement and continue in full force and effect.
- F. Severability. If any term contained in this Agreement is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Agreement, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.
- G. Terms. All of the terms of this Agreement are contractual and not merely recitals and none may be amended or modified except by a writing executed by all parties hereto.
- H. Priority. This Agreement supersedes and renders null and void any and all prior written or oral undertakings or agreements between the parties regarding the subject matter hereof.

IN WITNESS WHEREOF and acknowledging acceptance and agreement of the foregoing, the Parties affix their signatures hereto.

COVERED ENTITY:

BUSINESS ASSOCIATE:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Rev. 08/01/2013

ATTACHMENT K-1

FORM OF NOTIFICATION TO COVERED ENTITY OF BREACH OF UNSECURED PHI

This notification is made pursuant to Section III.2.D(3) of the Business Associate Agreement between Maryland Board of Physicians a unit of the Maryland Department of Health and Mental Hygiene (DHMH), and _____ (Business Associate).

Business Associate hereby notifies DHMH that there has been a breach of unsecured (unencrypted) protected health information (PHI) that Business Associate has used or has had access to under the terms of the Business Associate Agreement.

Description of the breach: _____

Date of the breach: _____ Date of discovery of the breach: _____

Does the breach involve 500 or more individuals? Yes/No
If yes, do the people live in multiple states? Yes/No

Number of individuals affected by the breach: _____

Names of individuals affected by the breach: (attach list)

The types of unsecured PHI that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code):

Description of what Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches:

Contact information to ask questions or learn additional information:

Name: _____

Title: _____

Address: _____

Email Address: _____

Phone Number: _____

Print Name: _____
Authorized Representative and Affiant

ATTACHMENT L-1

ATTACHMENT L – VETERAN-OWNED SMALL BUSINESS ENTERPRISE

This solicitation does not include a Veteran-Owned Small Business Enterprise goal.

**ATTACHMENT M – LOCATION OF THE PERFORMANCE OF SERVICES
DISCLOSURE**

(submit with Bid/Proposal)

Pursuant to Md. Ann. Code, State Finance and Procurement Article, § 12-111, and in conjunction with the Bid/Proposal submitted in response to Solicitation No.15-14125, the following disclosures are hereby made:

1. At the time of Bid/Proposal submission, the Bidder/Contractor and/or its proposed subcontractors:

___ have plans

___ have **no** plans

to perform any services required under the resulting Contract outside of the United States.

2. If services required under the contract are anticipated to be performed outside the United States by either the Bidder/Contractor or its proposed subcontractors, the Bidder/Contractor shall answer the following (attach additional pages if necessary):

- a. Location(s) services will be performed:

- b. Reasons why it is necessary or advantageous to perform services outside the United States:

The undersigned, being an authorized representative of the Bidder/Contractor, hereby affirms that the contents of this disclosure are true to the best of my knowledge, information, and belief.

Date: _____

Bidder/Contractor Name: _____

By: _____

Name: _____

Title: _____

Please be advised that the Department may contract for services provided outside of the United States if: the services are not available in the United States; the price of services in the United States exceeds by an unreasonable amount the price of services provided outside the United States; or the quality of services in the United States is substantially less than the quality of comparably priced services provided outside the United States.

ATTACHMENT N – DHR HIRING AGREEMENT

This solicitation does not require a DHR Hiring Agreement.

ATTACHMENT O – REHABILITATION PROGRAM

MARYLAND BOARD OF PHYSICIANS REHABILITATION
AGREEMENT

NAME: _____

LICENSE NUMBER (if applicable): _____

BOARD CASE NUMBER (if applicable): _____

EFFECTIVE DATES: _____ to _____

PUBLIC BOARD ORDER or DISPOSITION AGREEMENT (if applicable):

TITLE OF ORDER OR AGREEMENT AND DATE:

I, _____, agree to enter into the Maryland Board of Rehabilitation Program (“Program”) and to comply with the requirements of this Rehabilitation Agreement (“Agreement”) and my personal Rehabilitation Plan. I am entering into the Program and this Agreement as a result of an investigation of me by the Maryland Board of Physicians (“Board”) for a possible violation(s) of the Maryland Medical Practice Act, Md. Health Occ. Code Ann. §14-404(a).

I understand and agree that my compliance with this Agreement will be monitored by the Board and the Board will receive from the Program any verbal information and documents about me and that I shall sign any written release/consent forms, and update them as required, authorizing the Board to receive this information from the Program.

I understand and agree to comply with all of the following provisions:

1. I agree to obtain any medical, neurological, or psychological evaluations recommended by the Program, for the purposes of establishing diagnosis, tracking my condition, or establishing treatment recommendations.
2. I agree to follow the inpatient and/or outpatient treatment recommendations of the Program, as detailed in my Rehabilitation (Plan”), and I understand that all costs of treatment (e.g., to include but no be limited to, hospitalization, chemical screens, doctor fees, meeting fees) are my responsibility.

3. I will obey all federal, state and local laws and rules governing the practice of medicine in the State of Maryland. I will immediately report by telephone to my case manager any arrest or conviction for any offense.
4. I agree to sign any release/consent forms required to allow the Program to obtain records of my prior, present, or future health-related evaluations or treatment that may be needed for assessing my condition or monitoring my progress and compliance with the Program.
5. I agree to attend meetings with my case manager, at the frequency and in the manner specified in my Rehabilitation Plan, so that my case manager can monitor my compliance with the terms of this Agreement and my Rehabilitation Plan.
6. I agree to provide to the Program a written list of all locations at which I practice medicine, or provide medical services, including but not limited to, all hospitals at which I have privileges, all health maintenance organizations (HMO's), ambulatory surgical facilities as defined in Md. Health Gen. Code Ann., § 19-114 (b), health care facilities as defined in Md. Health Gen. Code Ann., § 19-114 (e), inpatient and/or outpatient clinics, and offices at which I practice medicine, and to update this list in writing within 7 business days whenever there are changes. I will follow the direction of the Program regarding notification of my employers or supervisors at locations where I practice or provide services.
7. I will obtain a worksite monitor, if required by my Plan, at any or all locations where I practice medicine and I will provide the worksite monitor with a copy of this Agreement. I understand that such monitors will communicate directly with the Program about my behavior in the workplace.
8. I will notify my case manager within 7 business days of any change of address, telephone number(s), employment, legal status and marital or family condition(s) that may be relevant to my recovery. If leaving the area where I live and/or practice medicine (e.g., vacation) interferes with compliance with my treatment plan, I will request approval from my case manager within 5 business days prior to leaving the area.
9. I understand that I must obtain advance approval from my case manager for any legitimate absence from testing that is not due to emergency or extraordinary circumstances. In the event that I am prevented by emergency or extraordinary circumstances from complying with the testing requirements of this Agreement and my Plan, I will notify the Program within twenty-four (24) hours. I understand that I bear the responsibility of proving to the Program that a legitimate justification existed. Even if the Program accepts my noncompliance as justified, the Program may determine that I have violated the terms of this Agreement if it identifies a pattern of avoidance of compliance.
10. I will abstain completely from the ingestion of any alcohol, Controlled Dangerous Substances (CDS), narcotics, cocaine, and any other mood-altering substance unless required or specifically permitted by my Plan, or prescribed, administered, or dispensed to me for legitimate medical reasons by another person authorized by law my case manager all personal use of any controlled dangerous substances and the name of the prescribing health care provider, and follow-up by submitting to my case manager written

documentation from that provider.

11. I will not self-prescribe any CDS medications.
12. I understand that act(s) of non compliance with this Rehabilitation Agreement and my personal Rehabilitation Plan, listed below, shall be reported to the Board by telephone within 24 hours, with written follow-up within 5 business days. This information will include but not be limited to my name, any supporting documents regarding my non compliance, as well as any and all records relating to drug and alcohol treatment and any other related records, files, or information regard my participation in the Rehabilitation Program, and will be provided to the Board. The follow is evidence of non compliance:
 - a. Failure to report or submit to a scheduled chemical screen or to provide an adequate sample for screening,
 - b. Positive chemical screen of substances,
 - c. Report from any hospital, facility, or employer indicating that I am a danger to myself or others.
 - d. Report from any hospital, facility, or employer that action has been taken against my privileges to practice medicine.
 - e. Assessment by the Program or any health care provider that I am a danger to myself or others.
 - f. An arrest or conviction that shows that that the participant is non-compliant with the Agreement or Plan.
 - g. Actual knowledge that the participant is under the influence of substances prohibited by the Agreement or Plan.

The Program may also terminate this Agreement if this occurs.

13. I understand that all other acts of noncompliance with the requirements of this Agreement and my personal Plan shall be reported to the Board upon request and on a quarterly basis, including but not limited to:
 - a. Failure or refusal to go for recommended/required treatment, attend a scheduled meeting with the case manager or other staff of the Program, or keep a scheduled appointment with a psychiatrist, psychotherapist, or other health care provider or employer.
 - b. Failure or refusal to attend a required group therapy session or any other required meeting of outside organizations, such as Alcoholics Anonymous or Narcotics Anonymous, regardless of the reason or excuse.
 - c. Failure or refusal to provide any information or sign the appropriate releases for the Program to receive records or information from third parties about my inpatient and/or outpatient treatment, attendance at any scheduled appointment or meeting a psychiatrist, psychotherapist, or any other health care provider, and fellowship meetings such as Alcoholics Anonymous or Narcotics Anonymous.
14. I understand that the Program is funded by and operates under a contract with the Board for the purpose of safeguarding the health, safety, and welfare of Maryland's citizens. Therefore, I understand that the Program is required to provide certain reports about me to the Maryland Board of Physicians. If at any time while this Rehabilitation Agreement is

in effect, the Maryland Board of Physicians substitutes another contractor to administer the Program, I agree that my obligation to comply with all terms and conditions contained in this Agreement and my Rehabilitation Plan survives and remains in full force and effect. In the event that the Board enters into a contract with another entity, I further agree to cooperate fully with the successor contractor during and after the transition period. I understand that all of my Program files and records will be provided to the successor contractor.

15. I agree to remain in the Rehabilitation Program for the entire monitoring period of this Agreement. If my recovery program requires additional time as determined by the Board, I agree to extend my agreement for additional time and remain in the program.
16. I agree that if I violate any term or condition of this Agreement or my Plan the Board may, in its discretion, issue public charges against me for violation of this Agreement and, after notice and an opportunity for a hearing, may impose any disciplinary sanctions against my medical license authorized under the Medical Practice Act, including a reprimand, suspension, probation, revocation and/or a monetary fine.
17. I agree that the effective dates of this Rehabilitation Agreement shall be

_____ through _____ .

Signature of Participant

Date

Printed Name of Participant

Signature of Case Manager

Date

Printed Name of Case Manager

Date

Signature of Medical Director

Date

Printed Name of Medical Director

Date

ATTACHMENT P – CONSENT TO EXCHANGE CONFIDENTIAL INFORMATION

REHABILITATION PROGRAM

I, _____ (name of participant) request and authorize:

(name or title of the person, program, or organization and address)
to exchange the following information (specify kind and amount of information to be disclosed):

with the Rehabilitation Program at the following address:

for the purpose of demonstrating and assisting my progress in recovery and compliance with my
Rehabilitation Agreement AND PLAN. Specify any other purpose:

I understand that federal and state law protects the confidentiality of my records and that my records cannot be disclosed without my written consent unless otherwise permitted by law. I also understand that I may revoke this consent at any time except to the extent that action has been taken in reliance on it. If not previously revoked, this consent expires one year or 365 days after the date of my termination from participation in the Rehabilitation Program.

I further acknowledge that the information to be exchanges was fully explained to me and that this consent was given of my own free will.

Executed this _____ day of _____, 20 _____ .

Signature of Participant

Signature of Witness

Printed Participant Name

Printed Witness Name & Title

ATTACHMENT Q – CONSENT TO RELEASE CONFIDENTIAL INFORMATION

**REHABILITATION PROGRAM
CONSENT FOR THE REHABILITATION PROGRAM TO RELEASE CONFIDENTIAL
INFORMATION TO AND RECEIVE CONFIDENTIAL INFORMATION FROM
THE MARYLAND BOARD OF PHYSICIANS**

I, _____ (name of participant), authorize the Rehabilitation Program to disclose the following information: My Rehabilitation Program case file, including any and all drug and/or alcohol and psychiatric/psychological/medical related records, and any other related records, files, or information regarding my participation in the Rehabilitation Program, to the Maryland Board of Physicians for the purpose of communicating and reporting to the Board written and verbal information about my progress, recovery, and compliance with my Rehabilitation Agreement and Plan and/or Board order.

I further understand that the Rehabilitation Program may report to the Board any acts of my noncompliance, as defined by my Agreement and Plan and/or Board order, and disclose to the Board any verbal information and documents regarding those acts of noncompliance. I also understand that the Board may, in its discretion, initiate disciplinary action against me based on my noncompliance.

I, _____ (name of participant request and authorize the Rehabilitation Program to receive information from the Maryland Board of Physicians in regard to any investigations or other issues relating to my licensure in the State of Maryland.

I understand that federal and state law protects the confidentiality of my records and that my records cannot be disclosed without my written consent unless otherwise permitted by law. I also understand that I may revoke this consent at any time except to the extent that action has been taken in reliance on it. If not previously revoked, this consent expires one year or 365 days after the date of my termination from participation in the Rehabilitation Program.

I further acknowledge that the information to be disclosed was fully explained to me and that this consent was given of my own free will.

Executed this ____ day of _____, 20____.

Signature of Participant

Signature of Witness

Printed Participant Name

Printed Witness Name & Title

ATTACHMENT R – SAMPLE REHABILITATION PROGRAM PLAN

**SAMPLE REHABILITATION PROGRAM
REHABILITATION PLAN**

PRACTITIONER NAME: _____

EFFECTIVE DATE:

From: _____ To: _____

1. EVALUATION (PSYCHIATRIC/NEUROLOGIC, PHYSIOLOGICAL—Specify, list, and provide information on each):

Clinician: _____

Phone: _____

Completion Date: _____

Comments: _____

2. PHYSICAL EXAM:

Physician: _____

Phone: _____

Completion Date: _____

Comments: _____

3. INPATIENT TX:

Facility: _____

Phone: _____

Adm. Date: _____ D/C Date: _____

Comments: _____

4. OUTPATIENT TX:

Therapist: _____

Phone: _____

Adm. Date: _____ D/C Date: _____

Comments: _____

5. SELF – HELP FELLOWSHIPS:

Alcoholics Anonymous: _____

Narcotics Anonymous: _____

Other: _____

Meeting per Week: _____

Date Begin: _____

Documentation
of Meetings: _____

Comments: _____

6. FAMILY INVOLVEMENT:

Members Present in Home: _____

Referred to Support Groups: _____

Comments: _____

7. WORKSITE MONITOR:

Name/s: _____

Telephone Number/s: _____

Worksite Address/es: _____

Comments: _____

8. CHEMICAL SCREENS:

Urine Breath Hair Blood Saliva Other:

9. LOCATION:

Phone: _____

Specimens per Month: _____

Date Begin: _____

Comments: _____

10. MEDICATION:

	ANTABUSE	TREXAN	OTHER
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____

Prescriber: _____
Phone: _____
Date Begin: _____

11. PRACTICE LIMITATION:

Limitations or modifications required by the Maryland Board of Physicians:

12. CASE MANAGER:

Case Manager: _____
Phone: _____
Frequency of Contact: Phone _____ Face to Face _____

Practitioner Name _____ **Date** _____

Care Manager Name _____ **Date** _____

Medical Director, Rehabilitation Program _____ **Date** _____

ATTACHMENT S – REHABILITATION PROGRAM REPORT

**REHABILITATION PROGRAM
WORKSHEET MONITOR REPORT**

Sample report form

DATE: _____

PARTICIPANT'S NAME: _____

WORKSITE LOCATION: _____

WORKSITE MONITOR: _____

PHONE NUMBER: _____

PERIOD COVERED: _____

CASE MANAGER: _____

I have observed the following changes in: (include both positive and negative comments/observations)

- _____ Absenteeism
- _____ Personal Habits
- _____ Practice Performance
- _____ Interpersonal Relationships
- _____ Social Behavior
- _____ Use of Prescriptions/Non-Prescription Drugs or Alcohol

Comments about practitioner: _____

Frequency of contact with practitioner __ Daily Weekly Monthly

Worksite Monitor's Signature: _____

Please return this form to : _____, or fax to: _____(secure fax)